SUPREME COURT OF THE UNITED STATES.

No. ~~326~~ 57.

REUBEN WITHERS, APPELLANT,

VERSUS

JOHN WITHERS.

APPEAL FROM CIRCUIT COURT UNITED STATES FOR THE COUNTY OF ALEXANDRIA, D. C.

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DISTRICT OF COLUMBIA, *to wit:*

To Mr. John Withers, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the National Government, on the first Monday in August next, to show cause, if any there be, why the decree of the circuit court of the District of Columbia for the county of Alexandria, rendered in your favor against Reuben Withers, on the 26th day of November, 1829, for the sum of three thousand three hundred and eight dollars and ninety-eight cents, with interest on two thousand three hundred and forty-one dollars and fifty-nine cents, part thereof, from the first day of November, 1826, till paid, together with the costs of suit, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Marshall, Chief Justice of the United States, this 12th day of February, 1831.

W. CRANCH,
Chief Judge of the Circuit Court for the District of Columbia.

DISTRICT OF COLUMBIA, *County of Alexandria,* } *Sct.*

Charles Scott personally appeared before me, a justice of the peace for the county aforesaid, and made oath in due form of law, that he delivered a true copy of the within citation to John Withers, in person.

Given under my hand, this 23d day of February, 1831.

ADAM LYNN.

DISTRICT OF COLUMBIA, *sct.*

Pleas before the honorable the Judges of the United States' circuit court of the District of Columbia for the county of Alexandria, at the court-house, in the town of Alexandria, the 26th day of November, 1829.

JOHN WITHERS, *complainant,* }
vs.
REUBEN WITHERS, *defendant.* }

Be it remembered, that, heretofore, to wit, on the 2d day of February, 1822, came the complainant aforesaid, and sued out of the clerk's office of the said court, a certain writ of subpœna, in chancery, against the said defendant, to the marshal of the District of Columbia directed, commanding him, &c.; which writ is in these words and figures:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

You are hereby commanded to summon Reuben Withers to appear before the honorable the judges of the circuit court of the District of Columbia for the county of Alexandria, at the court-house of the said county, in the town of Alexandria, at the next court, to answer a bill in chancery exhibited against him by John Withers; and this he shall in no wise omit, under the penalty of $333 33; and have then there this writ.

Witness the honorable William Cranch, Chief Judge of our said court, this 2d day of February, 1822.

[L. S.] EDM. I. LEE, *C. C.*

And at another day, to wit, at the rules held in the clerk's office of the said court, for the month of March, in the year 1823, came the defendant, by R. I. Taylor, esq., his attorney; and a day is thereupon given the complainant, until the next rules, to file his bill; and the same day is given to the said defendant, there, &c.

And at the rules held in the clerk's office for the month of May, in the same year, (this cause being continued at the April rules) the plaintiff having been ruled to file his bill, and, failing so to do, on the motion of the defendant, by his attorney, it is ordered that he be non-suited, and pay to the defendant his costs by him in this behalf expended.

And at a court continued and held for the District and county aforesaid, the 11th day of November, 1823, the order dismissing this case made at the rules in the clerk's office for want of bill, is, on motion of the complainant, set aside, and the bill filed, and cause reinstated; which bill is in these words:

Bill.

To the honorable the judges of the circuit court of the United States for the District of Columbia and county of Alexandria, sitting in chancery, humbly complaining, your orator, John Withers, respectfully showeth: that, on or about the 7th of March, 1815, your orator, and one Reuben Withers, (and whom your orator prays may be made a defendant to this bill,) entered into a copartnership together, as merchants, in the town of Alexandria, under the firm and style of J. & R. Withers, and that their said copartnership was to be conducted upon the following terms, viz. that your orator was to furnish fifteen thousand dollars, and to receive three-fourths of the profits of said business; and the said Reuben Withers was to furnish to the firm five thousand dollars, and to receive one-fourth of the profits; and in case of loss by the business, it was to be borne in the same proportions, and each party was to pay his own individual expenses. This their agreement was subsequently reduced to writing, of which a true copy is hereto annexed, and prayed to be taken as a part of this bill. And your orator further shows, that the said partnership business was entered upon, and continued in pursuance of the said articles of agreement, for a considerable time, that is, till on or about the day of , when the parties, both your orator and the said defendant, becoming very desirous to get in, and collect many debts which had been contracted during the progress of said business, and were outstanding and due to said firm, resolved to close said firm of J. & R. Withers, and to go on in their business under the firm and style of John Withers & Co. That they accordingly, from that time, proceeded in their said business under the name and style of John Withers & Co , but upon precisely the same terms and conditions, in all respects, as regarded each other, which they had agreed upon, and by which they had been regulated in the late firm of J. & R. Withers; and that they continued to carry on their said partnership business in pursuance of the aforesaid agreement, no other articles or instrument having ever been prepared or executed between them; that, during a considerable portion of the time, whilst this partnership business was continued, the said Reuben Withers was in the city of New York, and there engaged in the purchase of goods and merchandise for the use and benefit of said concern; and that, from time to time, very large sums of money from the funds of the firm were sent on to him for the purpose of being so invested in goods and merchandise; and that, from time to time, various parcels of goods and merchandise were received from him by the

complainant in this place; all of which were duly sold and disposed of here for the benefit of said concern, but no original or regular invoices, or bills of particulars of the goods so purchased, were ever sent on or purchased by said defendant. On or about the 13th December, 1819, the said parties finding it expedient, and the said Reuben Withers being then present, it was agreed that all their previous dealings and copartnerships should be closed, and forthwith dissolved; and, to facilitate this object, it was further agreed that your orator should receive, and take to his own proper use, all the goods, merchandise, profits, and property of every kind belonging to all or any of the previous firms or copartnerships, and become liable for, and take upon himself the payment of all debts due from the same; and that he should pay to the said defendant, Reuben Withers, a stipulated sum for his interest in the same. But your orator never having received a satisfactory account of the disbursements and transactions of said defendant whilst in New York as a member of the aforesaid firm of John Withers & Co., and believing that he was considerably indebted to said firm on account of these transactions then particularly stipulated; and it was in closing the said previous engagements of the parties, expressly excepted that the said Reuben Withers should render to said firm a true, full, and just account of all his purchases and transactions in the city of New York as a member of said firm; and further, that he should be exclusively liable for all debts and engagements which he might have contracted or made in name of said house, and for which they had not received full benefit. But, notwithstanding this agreement, and that your orator has frequently since applied to said Reuben for that purpose, he has heretofore entirely failed and neglected to render to him any proper or satisfactory account of his said dealings and transactions in New York; and your orator charges that the said defendant is in fact considerably indebted to him on account of these transactions; all which is contrary to equity and conscience, and tends to the manifest injury of your orator. To the end, therefore, that the said defendant may answer the premises, and that an account may be taken of all moneys sent to said defendant whilst in New York as aforesaid, and of all his disbursements, dealings, and transactions there, as a member of said firm of Jno. Withers & Co.; and that the said defendant may be decreed to pay to your orator what, if any thing, upon taking said accounts, shall appear to be due to him; and that such other and further relief may be granted to him as may be consistent with equity and conscience; may it please your honors to grant him the United States' most gracious writ of subpœna, &c.

T. F. MASON,
for Complainant.

And at another day, to wit, at the rules held in the clerk's office for the month of April, 1824, (until which time this cause had been regularly continued,) came the complainant, by his solicitor, and on his motion a day is given the defendant, until the rules to be holden for the month of July next, to file his answer; and the same day is given the complainant.

And at the rules held in the clerk's office of the said court for the month of November in the same year, (until which time this cause was continued,) the defendant having failed to file his answer, on the complainant's motion, the bill is taken for confessed, and set for decree.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 17th day of December, 1824, Robert I. Taylor appeared in open court, and became pledge and security for the defendant

that he shall pay all costs which may be awarded against him in this case, or that he, the said R. I. Taylor, will do it for him. And, thereupon, the defendant filed his answer, to which the complainant replies generally, and the cause is returned to the rules for further proceedings; which answer is in these words:

Answer.

To the honorable the Judges of the circuit court of the United States for the District of Columbia and county of Alexandria, sitting in chancery:

The answer of Reuben Withers, to the bill of complaint of John Withers, complainant. The said defendant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or to so much thereof as materially concerns this defendant to make answer unto, he answereth and saith: that he has not now with him a copy of the articles of copartnership, but he believes, and therefore admits, that the said parties entered into the said partnership, under the firm of J. & R. Withers, and upon the terms and conditions as stated in the complainant's said bill of complaint; and that afterwards, namely, some time in the year one thousand eight hundred and se enteen, when the parties were desirous to get in the outstanding debts of the said concern, and for the further purpose and object of being able to sell goods for cash, they determined to open another store in the city of Alexandria, under the name and firm of *John Withers & Co.*, to sell goods at retail and wholesale, for cash; and that, on or about the same time, they did open another store for the same object, in the city of Washington, under the name and firm of Withers & Washington; in which concern they gave John Washington an interest, whilst at the same time they continued to carry on business under the firm of J. & R. Withers; and the new firms were conducted without any new articles or agreements having been reduced to writing, but under the verbal understanding that the same should be on the same terms and conditions as the firm of J. & R. Withers. And the defendant doth expressly deny that he ever did make use of the name of the firm of John Withers & Co., in the city of New York, but in that city he always continued to use the name and firm of J. & R. Withers, as he had done previously to the establishing of the new firms of John Withers & Co., and Withers and Washington; and hence all the purchases of goods which he made, and all the notes that were given, were in the name of the firm of J. & R. Withers; and the original invoices were consequently made in the name of the firm of J. & R. Withers; but in the transmitting of such original invoices to the respective houses of John Withers & Co., and Withers and Washington, they were accompanied by new invoices made out by this defendant in the name of the firm for whom the goods were intended, and were so charged by the said defendant to the several concerns of J. & R. Withers, John Withers & Co., and Withers and Washington, and are so entered in the books of account kept by the said firms for that purpose; which books are now in the possession or control of the said complainant, as hereinafter mentioned. And this defendant also admits to be true, and so was the original understanding at the formation of the said partnership of J. & R. Withers, that this defendant was to spend a considerable portion of his time abroad for the purpose of purchasing goods and merchandise for the use and benefit of the said concern; and, although it was stipulated in the arti-

cles of copartnership that each party was to pay his own individual expenses, yet the same was meant and intended to apply when the parties were at home, and not travelling on the business of the concern; and, as the evidence of such being the case, this defendant was uniformly allowed on the settlement of his accounts at the termination of each absence on business, his travelling expenses, all of which have been regularly entered in the books of account kept by the complainant, or his clerks, and under his control, as by reference thereto will appear. And this defendant also admits it to be true, that various large sums of money, from the funds of the partnership, were transmitted to him at England, New York, Philadelphia, and Baltimore, for the purpose of being invested in goods and merchandise, and for the purpose of meeting engagements he had made for merchandise purchased for the benefit of the concern; and he doth most expressly aver and declare that the said funds have been well and faithfully, to the whole extent thereof, applied to the several objects for which they were remitted and received. And this defendant doth also aver and declare, that his uniform practice was, when he transmitted the goods to the several concerns for whom they were intended, to send, at the same time, or very soon after, the original invoices or bills of particulars; and to the best of his knowledge, recollection, and belief, there was, in no single instance, an omission to send the same; and according to the best of this defendant's recollection, he always found on his return to Alexandria, the amount of these invoices entered to his credit, as well on the books of John Withers & Co., as on those of J. & R. Withers, and Withers & Washington. And this defendant further admits, that, on or about the thirteenth day of December, one thousand eight hundred and nineteen, the said parties did, by memorandum in writing, under hand and seal, agree to dissolve all their previous copartnership concerns; and this defendant, in consideration of the undertakings and agreements therein mentioned, to be performed on the part of the said John Withers, did grant, assign, and set over unto the said Jn. Withers, all his interest in the several copartnership concerns in which he ever had any interest with the said Jn. Withers. And the complainant, John Withers, in consideration of such assignment, did agree to pay to this defendant the sum of two thousand five hundred dollars, in cash or in goods, at cost, to be placed in a new firm formed on the same thirteenth day of December, one thousand eight hundr d and nineteen, under the style of J. & R. Withers & Washington; and in case the said sum of money or goods should not be immediately paid or furnished to the said new firm for and on account of this defendant, then the complainant, John Withers, was to be charged with interest on the said sum until so paid or furnished, as by reference to the said memorandum, one part whereof now in the possession of this defendant, and which he is ready to produce and prove, when and where it shall be required, will, among other things, more fully and at large appear; and to which, for greater certainty, this defendant prays leave to refer.

And this defendant says, that it was the uniform practice, during the continuance of the copartnership concern with the complainant, John Withers, on the return of this defendant from New York, or elsewhere, after bringing to a close the transactions he had previously had during his absence, to exhibit his book of account for inspection and examination, and the same was always examined and corrected, when necessary, and balanced and made to agree with the books of account kept by the firm in Alexandria. That at the time of the dissolution aforesaid, and the making of the new copartner-

ship as hereinbefore mentioned, this defendant had recently returned from the city of New York, where some few items of the last transactions there had not been settled and closed, and he was therefore unable to have the whole accounts of his transactions, during his last absence, examined and balanced into the books of the firms at Alexandria, and settled, as had always previously thereto been done. Therefore, the complainant, the said John Withers, insisted upon making a provision in the aforesaid memorandum, respecting the dissolution, to which this defendant agreed, namely: "that this defendant was to render a full, true, and just account to the firm of John Withers & Co., of all his purchases and transactions in New York, as a member of, or for and on account of the said firm of Jn. Withers & Co., and to be liable for all debts or engagements which he may have entered into (if any) on account of said house, and for which the said firm may not have received full benefit and advantage."

And this defendant does expressly aver and declare, that, after the making the dissolution and new partnership as aforesaid. and after having closed the transactions in his last previous visit to New York, he did make up, state, and render the account of his said business, and submitted the same for examination; and the same account, when so examined and corrected, was balanced, as this defendant thinks, on the books of John Withers & Co., in Alexandria, which are now in the possession, or under the control of the said complainant. And this defendant therefore says, that every transaction, as far as he knows or believes, relating to the firm of John Withers & Co., now stands recorded on the books of the firm in Alexandria, in the possession, or under the control of the complainant, the said John Withers; and that there is no debt due in the city of New York, or elsewhere, to any person or persons whomsever, from the said John Withers & Co., contracted by this defendant, but every such debt, contract, or engagement, whatsoever, so far he knows or believes, has been paid off, satisfied, and discharged. This defendant denies all fraud, combination, and concealment, and prays to be hence dismissed, with costs, &c.

REUBEN WITHERS.

The defendant, Reuben Withers, was, on the day of September, 1824, sworn before me, that what was contained in this, his answer, so far as relates to his own act and deed, is true, of his own knowledge; and what relates to the act and deed of any other person, he believes to be true.

In testimony of the foregoing, I, William Paulding, mayor of the city of New York, have hereunto subscribed my name, and have caused the seal of mayoralty to be hereunto affixed, this sixth day of September, 1824.

WM. PAULDING, jr. [L. S.]
Mayor of the city of N. York.

Set for hearing.

And at the rules held in the clerk's office of the said court for the month of April, in the year 1825, (until which time this cause had been regularly continued,) came the parties aforesaid, by their attorneys; and thereupon, this cause is set for hearing upon the bill, answer, and general replication, and issue.

Referred to comm'r.

At a court continued and held for the District and county aforesaid, the 30th day of April, 1825, this cause is, on motion of the complainant, referred to Master Commissioner Auld, to state and settle the partnership accounts between the parties, in the firm of John Withers & Co., with leave to either party to have made such special statements at his own costs, as he may think necessary.

And at a court continued and held for the District and county aforesaid, th 12th day of December, 1825, this cause was continued.

At a court continued and held for the said District and county, the 5th day of May, 1826, this cause was continued.

Comm'rs report filed.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 17th day of November, 1826, master commissioner Auld filed his report, and this cause is continued. [See report No. 1, end of record.]

Referred to comm'r to take further accounts, &c.

And at a court held the 2d day of December in the same year, master commissioner Auld having returned his report, it is, by consent of parties, agreed and ordered that the same commissioner do proceed to take such further account, as either of the parties may require, so as such account be taken before the 1st day of February next; and it is further agreed, that all exceptions to the account heretofore taken, or to that now authorized, be filed in the clerk's office on or before the 1st day of March next. [See No. 2, report, end of record.]

Leave to either party to file additional exceptions to report, &c., & to take further depositions, &c.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 20th day of April, 1827, came the parties aforesaid, by their solicitors, and by consent, either party is at liberty to file any additional exceptions to the report of the commissioner, provided the same be filed before the first day of July next; and commissions may be issued to either party, to take any further depositions in the cause they may deem necessary, provided the same be filed before the 1st day of September next; and any error in setting the cause for hearing is hereby waived.

And at a court continued and held for the said District and county, the 15th day of November, 1827, this cause was continued.

All exceptions to comm'rs report, except the 2d, overruled.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 26th day of April, 1828, this caus having been, by consent, set for hearing upon the bill, answer, exhibits, and depositions, the report of the commissioner, and the exceptions to the report; and coming on now to be heard, and the same having been argued by counsel, and considered by the court, it is decreed and ordered, that all the exceptions of the complainant to the said report, except the second, be overruled for the reasons stated in the report of the commissioner; and as to the said second exception, which is to the defendant's charge of his expenses, amounting in three items to $1,756, the court allows the defendant his reasonable travelling expenses to and from New York, and the necessary difference between the expense of living at New York and at Alexandria; and it is ordered that the account be recommitted to commissioner Auld, to ascertain the same, and to reform the account accordingly.

1st exception.

As to the first exception of the defendant to notes charged against him, as stated in pages 8, 9, and 10, of the report, a list of which is marked in the said report by the letter A., it appears that the goods for which these notes of J. and R. Withers were given, went to the credit of the defendant, R. Withers, in account with J. Withers & Co.; and it appears from the document, marked I, that when paid by J. and R. Withers, he had credit for them in account with J. and R. Withers and Washington: having credit for them twice, he ought to be charged once for them in the account with J. Withers and Co. It is therefore the opinion of the court that this exception be overruled.

The 2d exception by the defendant is to the charge of money remitted to D. Dunham. The charge of $2,164 17 being the balance of $5,011, remitted in January and February, 1819, is expressly admitted by the defendant in his letter of the 5th December, 1820, annexed to the letter of Jn. Washington, marked A; and as to the 5,790 dollars, remitted in December and November, 1819, it appears that the defendant has credit in the report for the goods, on account of which that money was remitted to Mr. Dunham. This exception is therefore overruled. 2d exception.

The 3d exception of the defendant contains several items, 1st, for not allowing him credit for $63 88, paid Randolph and Edgar. As to this, it is alleged by the plaintiff, and not denied, that the defendant had credit with J Withers and Co., for the goods, and, if so, he ought not also to have credit for paying for them. The 2d item under this 3d exception is for not allowing $217 29 paid Gantly. This ought not to have been allowed the defendant, because he already had credit for it. 3d, for not allowing $156 25 paid Randolph and Edgar, 15th September, 1817. This item is not in the report, and does not appear to have been offered to the commissioner. It is probable from the usual course of business, that the defendant had credit for the goods purchased of Randolph and Edgar, and therefore this credit ought not now to be allowed. 3d exception.

The 4th item is the credit allowed the plaintiff for $266 38 paid to Stewart and others. This ought to be allowed for the reasons stated by the commissioner, in his note 46 to his report. The 3d exception, therefore, is overruled. It is therefore decreed and ordered, that all the exceptions to the report of the commissioner be overruled, except the second exception of the complainant; and that the account be referred back to the same commissioner, to be reformed according to the principles of this decree. [See report No. 3, end of record.] Account referred back to comm'r.

And at a court continued and held for the said District and county, the 25th day of November, 1828, this cause is recommitted to Commissioner Auld, and continued [See report No. 4, end of record.]

And at a court continued and held for the said District and county, the 9th day of May, 1829, this cause is recommitted to Commissioner Auld, to report according to the former order of this court. [See report No. 5.]

And now here at this day, to wit, at a court continued and held for the District and county aforesaid, the 26th day of November, 1829, came the parties aforesaid, by their attorneys, and the bill and answer having been filed, and having been regularly set for hearing on the bill, answer, replication, and issue, and having afterwards been referred to Master Commissioner Auld, to state and settle the accounts between the parties; and he having returned his report, to which exceptions were filed, and the court having heard and considered the said exceptions, and having overruled the same, except the second exception; and having been referred back to the said commissioner to reform his report according to the decree of the court; and the final report of the said commissioner having been returned more than three months previous to the commencement of the present term of this court, and an exception having been filed to the said final report, the court, on consideration thereof, having overruled the same; and the cause coming on now for final hearing on the said bill, answer, depositions, reports, and exhibits, and the court having fully considered the same, doth order and decree that the said defendant, Reuben Withers, do pay to the complainant, John Withers, the sum of $3,308 98, with interest thereon at Final decree.

the rate of six cent. per annum on $2,341 59; part thereof from the first day of November, 1826, till paid, together with the costs of this suit.

Complainant's costs $270 84.

Articles of Copartnership.

Memorandum of an agreement made this thirteenth day of December, in the year of our Lord one thousand eight hundred and nineteen, between John Withers, of the town of Alexandria, District of Columbia, of the first part, and Jn. Washington, of the same town and district aforesaid, of the second part, and Reuben Withers, of the city of New York, of the third part, as follows: "the said John Withers and Reuben Withers do mutually agree that the late joint dealings and copartnerships, under the firm and style of J. & R. Withers, and John Withers & Co., be forthwith dissolved; and the said John Withers, Reuben Withers, and John Washington, do each severally and mutually agree, one with the other, that their copartnership and joint dealings under the firm of Withers and Washington, be also forthwith dissolved; and the said Reuben Withers, for and in consideration of the undertakings and agreements hereinafter mentioned and set forth, and to be performed on the part of the said Jn. Withers, doth covenant and agree, and by these presents doth grant, assign, and set over unto the said John Withers, all the right, title, and interest whatsoever, which he, the said Reuben, hath, should, or ought to have of, in, or to, all and singular the goods, wares, and merchandise, or debts and property of every kind, belonging or owing to, and all profits arising from all or either of the above named firms or copartnerships of J. & R. Withers, Jn. Withers & Co., and Withers & Washington. And the said Reuben doth further covenant and agree to and with the said John Withers, that he, the said John, shall have and may receive all the interest, benefits, and profits wherein the said Reuben shall or may be entitled to in any manner, in a certain other copartnership conducted under the firm and style of Saml. Gardner & Co., and of all and every other firm and copartnership in which the said John and Reuben have heretofore been engaged; and that he will permit and suffer the said John Withers, his executors, administrators, or assigns, to have, take, recover, receive, and enjoy to his and their own proper use, all the said goods, merchandise, debts, and profits, and every of them belonging, or in any wise appertaining, to either or all of the aforesaid firms or copartnerships, without any account, to be yielded or made for the same, or any part thereof, to the said Reuben, his executors, or administrators. And the said Jn. Withers, for and in consideration of the agreements and undertakings herein before set forth to be done and performed on the part of the said Reuben Withers, doth covenant and agree to pay to the said Reuben Withers the sum of twenty-five hundred dollars, in cash, or in goods at cost, to be placed in a new firm this day formed, under the style of J. & R. Withers, & Washington; and in case the said sum of money or goods shall not be immediately paid or furnished to said new firm, for and on account of said Reuben Withers, the said John is to be charged with interest on the same until so paid or furnished. And the said John Withers doth further covenant and agree, and by these presents doth free and release the said Reuben Withers from all debts and liabilities with which he stands charged, or may be subjected to for and on account of the aforesaid firms and copartnerships, or either of them, as a member of the same, or either of them; and also, that the said John Withers will at all times hereafter save and keep harmless the said Reuben Withers, his heirs,

executors, and administrators, from all actions, suits, costs, and demands, which may be had, commenced, or made against him as a member, or for and on account of the firms and copartnerships aforesaid, or either of them, except that the said Reuben Withers is to render a full, true, and just account, to the firm of Jn. Withers & Co., of all his purchases and transactions in New York, as a member of, or for and on account of the said firm of Jn. Withers & Co., and to be liable for all debts or engagements which he may have entered into (if any) on account of said house, and for which the said firm may not have received full benefit and advantage. And the said John Washington doth covenant and agree with the said Jn. Withers, that he, the said John, shall and may take all the goods and merchandise belonging to the firm of Withers & Washington, (in which said firm alone the said Washington holds an interest,) and collect and secure all the debts and moneys due to said firm: provided, always, that the said Washington be permitted, and the privilege is hereby expressly reserved to him of collecting, settling, and closing the debts and concerns of the said firm of Withers & Washington, so far as the share and interest of said Washington is concerned, that is, to the extent of one-fourth of the profits of said copartnership. And it is further agreed by and between the said parties to these presents, that due notice shall immediately be given and published of the dissolution of all the copartnerships aforesaid.

In witness whereof, the said parties have hereunto set their hands, and affixed their seals, on the day and year first above written.

JOHN WITHERS, [SEAL.]
JN. WASHINGTON, [SEAL.]
REUBEN WITHERS. [SEAL.]

Signed, sealed, and delivered, in presence of
THOMSON F. MASON.

1st deposition of Jno. Washington.

The deposition of John Washington, taken at , on the 29th April, 1825, to be read in evidence on the trial of a suit in chancery, now depending in the circuit court of the United States for the District of Columbia and county of Alexandria, in which John Withers is complainant, and Reuben Withers defendant.

This deponent, being first duly sworn, says, that he acted as a clerk in the late firms of J. & R. Withers, and John Withers & Co.; that he was intimately acquainted with the concerns of said copartnerships, and with their modes of transacting business; that Jn. Withers attended mostly to what was called the out door business, making contracts for sales, collecting, arranging, and settling their many and large claims in the country, and was much of his time necessarily absent from town, thus engaged in the affairs of the said copartnership; and he did not attend to the books of the firm, but was, on the contrary, frequently, for months at a time, without ever seeing them; nor does this deponent *or* believe that he at any time particularly examined them, unless it might be for the purpose of examining and settling some particular account that, in the course of business, was called to his attention; that Reuben Withers went on from time to time to the city of New York, and elsewhere, and made mostly, if not all the purchases on account of said firms; that, upon sending on said goods, the said Reuben generally sent on a list of goods and prices, or bill of them, in his own handwriting, which purported

to be copies of the original purchases and invoices; which copies were, when thus furnished, entered on the books of said firm in Alexandria, by some one of the clerks in the house—often by this deponent himself. And this deponent says, that it was in very few instances that the original invoices or account of purchases were sent on or furnished by the said Reuben; that, upon the return of said Reuben, it was the usual custom for said Reuben and this deponent to compare their books, and to adjust and see that they agreed, and whatever alterations, charges, or credits were made in the books, were made and done solely by the directions of the said Reuben Withers, and mostly from vouchers and documents in the handwriting of the said Reuben, no original papers or invoices being produced, except in very few instances: John Withers not being present at any of these comparisons or settlements, that is recollected by this deponent, and in many instances he was absent in the country on the business of the firm; that, upon several of these occasions, entries were made in the books in Alexandria, and sometimes in the handwriting of said Reuben, and always under his direction, of large sums of money for individual expenses, &c., incurred by said Reuben in New York and elsewhere. At one time he recollects the sum of upwards of $900 for the space of about 9 months; that so soon as these items were mentioned by the deponent to said John Withers, he objected to them, and said they were incorrect, and contrary to their agreement. This deponent has good reason to believe, and does verily believe, John Withers was entirely ignorant of the state of the books, and of the accounts between himself and his copartner, for he not only never attended to or examined the books as before stated, but the deponent well recollects that, in December, 1819, when a settlement was proposed of the previous firms, and the commencement of a new one, in which this deponent was to become interested, said John Withers called on this deponent, and asked him how he supposed the accounts would stand between him and the said Reuben; and, after conversing with this deponent, he positively refused to make any settlement with said Reuben unless he would bind himself to account for, and make good all his dealings in New York, and which said Reuben accordingly agreed to do; that said Jn. Withers then positively objected to allowing said Reuben any thing on account of expenses, except so far as travelling, and the expenses of living, might be greater in New York than in Alexandria, and this he did not admit he was bound to allow, as it was contrary to their agreement.

At a subsequent period, the said parties again met in Alexandria, and went on and endeavored to make a settlement of their accounts, which was the first attempt that this deponent ever knew or heard of, and in this effort they failed. They had not proceeded far when a credit was found of $1,000, upon the account of said Reuben Withers, which was not entered against him in the books in Alexandria; that Reuben Withers then said he supposed this was probably a mistake, and took back his account, and returned to his boarding house to examine into the fact, and since that there has been no adjustment or settlement of accounts between them; the said sum of $1000 has never as yet been entered on the books in Alexandria, unless recently charged by said John Withers, and since they failed in said attempt at settlement. Though this deponent has since seen and examined the original letter of Reuben Withers acknowledging the receipt of it, and which letter is now in the possession of Mr. J. Withers, and the deponent knows the circumstance of its being sent on, for he did himself transmit it to said Reuben Withers; and the date at which said item of $1000 ought to have been charg-

ed to said Reuben, was prior to several entries so made with said Reuben; and this deponent, upon comparison of the books as aforesaid, and was in the attempted settlement between the said John and Reuben, discovered at that part of the accounts. The deponent further says, that the account of the last transactions of said Reuben in New York, has never yet been entered on the books of the firm in Alexandria, at least a part of them only; and no regular account of them has ever been rendered to the knowledge of this deponent, the account of the said Reuben being taken away with him at the time they attempted to settle, as above stated; and when they differed about the said sum of $1,000, and the books of the firm in Alexandria, as regards the accounts of said parties, still stand open and unclosed. The deponent further says, that there are, to his own knowledge, some inaccuracies and omissions besides those mentioned on said books of the firm in Alexandria, and which he has examined, but which he is unwilling to detail at this time, as he may be inaccurate, not having the books to refer to.

Sworn to before me, this 30th day of April, 1825.

N. S. WISE.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Newton Keene and Christopher Neale:

Gentlemen of , greeting:

Ynow ye, that we, trusting to your fidelity and provident circumspection in diligently examining in behalf of Reuben Withers, in a suit depending in our United States' circuit court for the District of Columbia for the county of Alexandria, between John Withers and the said Reuben Withers. We therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid before you, or any two or more of you, that you call, and cause to come and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him, and taken his deposition as aforesaid, that you return the same to our said court, certified under our hands and seals, enclosed together with this writ.

Witness, William Cranch, esq., Chief Judge of our said court, this 16th day of July, in the year of our Lord 1827.

[L. S.] EDM. I. LEE, *C. C.*

2d deposition of Jno. Washington.

The deposition of John Washington, taken at the office of Chr. Neale, on King street, Alexandria, on Monday, the 13th day of August, 1827, between the hours of nine A. M. and one P. M. of that day, agreeably to notice given, and agreeably to a commission to us directed from the United States' circuit court for the county of Alexandria, in the District of Columbia, to be read in evidence in a certain suit depending on the chancery side of the said court, (on behalf of Reuben Withers,) wherein John Withers is complainant, and the aforesaid Reuben is defendant.

This deponent, being first duly qualified, cautioned, and sworn as the law directs, deposeth and saith, in answer to the following interrogatories:

In the deposition which you gave in favor of the complainant in this cause, on the 13th June, 1827, you stated, in your answer to the first interrogatory, hat John Withers, the plaintiff, was much of his time necessarily absent in

the country, attending to the affairs of Jno. & R. Withers; that Reuben Withers, the defendant, was also much in New York, selecting and purchasing goods for the firm; that copies of the invoices of such purchases, generally speaking, were sent on to the house in Alexandria, instead of the original invoices; and that Reuben Withers and yourself settled and adjusted the books from time to time, &c.

Question 1st, by defendant. Did not John Withers, upon his return to Alexandria from these country trips, charge his expenses to the firm, when engaged in transacting the business of the firm; and was Reuben Withers always privy and consenting to such charges, or was it a right mutually exercised by the parties while partners?

Question 2d. Do you not believe that the invoices sent on by Reuben Withers, from New York, to the house in Alexandria, were true copies of the originals; and were not the originals subsequently sent on or delivered by Reuben Withers?

Question 3d. In adjusting, settling, and comparing the books of J. & R. Withers, under the direction of Reuben Withers, have you any reason to suspect unfairness was practised by Reuben? if so, please state your reasons.

Question 4th. How long did the copartnership subsist between the present plaintiff and defendant?

Question 5th. Were not the books, during all that time, open to the inspection of John Withers, and constantly kept in the counting room in Alexandria?

Question 6th. And did John Withers ever utter a word of objection or discontent, during all that period, either to you or to Reuben Withers, in your presence, at the charges for Reuben Withers's expenses, until the month of December, 1819?

Question 7th. Did John Withers object to these charges for Reuben's expenses, before or after he purchased out Reuben's interest in the concern? and when he did so object, was it to you or to Reuben; and if to you, was Reuben present?

Question 8th. Do you believe that Reuben Withers would have sold out his interest in the firms of J. & R. Withers, and John Withers & Co., for $2,500, had he been told by Jn. Withers, at the time, that his (Reuben's) expenses were to be deducted therefrom?

Question 9th. Was the object of introducing the clause in the contract to which you allude in your 3d answer to the plaintiff's interrogatory, known to Reuben Withers at the time; and, if so, how did you arrive at this knowledge?

Question 10th. Did not Reuben Withers go to England as a partner of J. & R. Withers; and, if so, when did he go, how long did he remain there; for what purpose did he go; and were not his expenses whilst so absent allowed upon his return, and accordingly charged upon the books of the company, with the knowledge and consent of his copartner John Withers?

Question 11th. You say in your deposition of the 13th June, 1827, that the firm of which you are now a partner, allows Mr. Jn. H. Brent $150 per annum, as your purchaser in New York. Do you mean by this to include every allowance which you make him? If not, state what other allowance you superadd to that of $150 per annum.

Question 12th. Is there not a considerable difference in favor of the expense of travelling and board between this and New York now, and in the years 1817, '18, and '19?

Question 13th. Were not the expense of travelling to the westward in 1818 and 1819, much less than travelling to the north in the same years?

Question 14th. Has Reuben Withers credit on the books of J. & R. Withers, or J. Withers & Co., for $152 $\frac{25}{100}$, paid Jno. Kelly, 14th May, 1818, and $138 $\frac{13}{100}$, paid Lawrence Rapley & Co., 28th November, 1818?

Question 15th. Did Reuben Withers ever admit, in your presence, that he considered himself bound for four remittances made by Jn Withers, in November and December, 1819, to David Dunham, of New York, amounting to $5,790?

Question 16th. Do you know how this money was applied. If so, please state it minutely.

Question 17th. Look upon the letters marked A and B; the 1st, dated 22d November, 1820, and the 2d, dated 8th December, 1820, and addressed to Reuben Withers, New York; and say if you did not write them.

Question 18th. Look upon the letter marked C, dated New York, 1st December, 1819, and addressed to J. & R. Withers, Alexandria, and signed David Dunham; and say if it is not said Dunham's signature.

Question 19th. When did the firm of John Withers & Co. commence?

Question by plaintiff, 1st. Did you ever know Jn. Withers charge the firm of John Withers & Co., any other than travelling expenses; and what amount does there appear he has charged said firm; and do you know of any bargain or right that plaintiff or defendant had to charge their expenses, other than that contained in the articles of agreement?

Question by plaintiff, 2d. From your knowledge of the business of John & R. Withers, do you not think that R. Withers made a good bargain when he sold out his interest to Jno. Withers, for $2,500 profit; and that Jno. Withers was looser by the bargain? and does it not appear clearly that R. Withers brought no funds into the firm; and that the business of importing done during the time *of* Jno. & R. Withers was in copartnership, brought on very heavy losses on that house?

Question by plaintiff, 3d. Has the letter of D. D., alluded to in defendant's 17th question, any envelope attached to it; and might it not have been directed on the out side to R. Withers; and at any rate do you believe Jno. Withers ever *see* it; and do you not believe that it has been kept ever since it was received by R. Withers, until it has lately been delivered over to, and produced by his counsel C. Neale; and was there any *copies* of the letters of the 22d November, and 8th December, 1820, taken; and did John Withers ever see them?

Answer to defendant's 1st question. If he did charge them to the firm, the books will show; and it is not known to this deponent whether the defendant, R. Withers, was privy to such charges, if any, or whether he consented to them; or whether there was any right understood to exist between them to do so.

Answer to defendant's 2d question. This deponent has no reason to believe otherwise than that they were correct copies of the original bills of purchases; and has stated in his deposition taken by the plaintiff, all he knows about the original invoices or bills of purchases.

Answer to defendant's 3d question. This deponent never had any reason to believe that any fraud or unfairness was intended.

Answer to defendant's 4th question. The copartnery contract will show the time of commencement, and, the articles of dissolution, when it closed.

Answer to defendant's 5th question. The books were always in the counting room, at the disposal and inspection of either party.

Answer to defendant's 6th question. I don't recollect whether he ever did.

Answer to defendant's 7th question. This deponent knows that, before the purchase was made, the plaintiff told this deponent that he would not allow the charges for expenses; and insisted on the clause being inserted in the dissolution contract, making the defendant responsible for his transactions in New York, &c. The deponent does not know whether the objection to the charge for expenses was made by the plaintiff to the defendant, at that time, or not.

Answer to defendant's 8th question. This deponent cannot say what the defendant, or any other person, would have done in such a case. He had every opportunity to examine the state of the copartnership accounts.

Answer to defendant's 9th question. I cannot say whether the defendant was aware of the object or not; suppose the plaintiff's object was general, as regarded the accounts between him and his partner.

Answer to defendant's 10th question. The defendant left Alexandria for England in the month of April, 1815, and did not return until the spring of 1816. During his absence he made large purchases on account of the firm of J. & R. Withers; and, at his return, his expenses were entered to his credit, but not by the consent or knowledge of the plaintiff, J. Withers, or to the knowledge of this deponent. It is not known to this deponent whether the plaintiff ever saw the entry until about the time they were about to dissolve.

Answer to defendant's 11th question. In addition to the $150 which the firm I am now engaged allow Mr. Brent, we are bound to pay his travelling expenses to and from New York; the allowance of $150 is made for the extra cost of his board in New York, above what it would cost him to board in Alexandria.

Answer to defendant's 12th question. This deponent having never travelled to New York until after the year 1819, cannot say whether any difference did exist: he was in New York, in 1821, for the first time, and he is not now aware of any change having taken place since.

Answer to defendant's 13th question. The deponent not having travelled either direction in the years named, cannot say what difference there would have been in the expenses travelling the two routes.

Answer to defendant's 14th question. The deponent says Reuben Withers has credit on the books of John Withers & Co., for these two notes, say $152 25, and $138 13; which notes were given by him for purchases made on account of J. & R. Withers, and are so entered on the said J. & R. Withers's bill book.

Answer to defendant's 15th question. This deponent states, that the defendant did admit the said four sums, which make, together, the sum of $5,790, as a correct charge against him; and which sums are entered on the cash book of Jn. Withers & Co., mostly, if not always in the handwriting of the defendant; and was remitted by the defendant out of the funds of the firm of Jn. Withers & Co., to David Dunham, of New York, to be applied by him to the payment of certain notes of the firm, falling due in the month of November and December, 1819, while the defendant, R. W., was in Alexandria, and was placed to his debit on the back of John Withers & Co's. cash book, while the defendant was in Alexandria.

Answer to defendant's 16th question. When this deponent was about

to charge John Withers in the books of J. & R. Withers & Washington, with the amount of debts paid for him in New York by the defendant, he (John) said it was more than he was bound to pay; that the defendant had not given him credit for the balance of the money remaining in the hands of David Dunham. This caused the deponent's letter to the defendant, marked A, dated 22d November, 1820, inquiring as to the facts, to which the defendant replies under date of 5th December, 1820, and says: "as to the $2,100 you mention in the hands of Mr Dunham, John Withers & Co. have credit on my books here for $2,164 17, money remitted Mr. Dunham in January and February, 1819." This deponent not having the books of the firm to examine as to dates, and not having been correctly advised by the plaintiff, acquiesced in the correctness of the defendant's statement, as will appear by the deponent's letter to the defendant, bearing date the 8th December, 1820, marked B, when it was the balance of the $5,790 which was inquired for, and which was remitted, as before stated, in November and December, 1819.

Answer to defendant's 17th question. This deponent says he did write the two letters marked A and B.

Answer to defendant's 18th question. The letter marked C, the deponent believes, is signed by David Dunham, and is his signature.

Answer to defendant's 19th question The house of John Withers & Co. was opened in April, 1817, but the accounts were kept by J. & R. Withers, up to January, 1818, at which time Reuben Withers's account commences with the firm of John Withers & Co.

Answer to plaintiff's 1st question. If the plaintiff has charged any thing, it *as* a small amount, but the books will show; and I have never known of any other agreement with regard to expenses, other than is stated in the articles of copartnership.

Answer to plaintiff's 2d question. The compromise has always been considered by the deponent very fair, as immense losses have been sustained by the plaintiff in settling and closing the business. The defendant brought no money into the partnership with the plaintiff.

Answer to plaintiff's 3d question. This deponent, to the best of his knowledge, never heard of the letter marked C, until within the last week, nor *neither* does he believe the plaintiff ever has seen or heard of it until now; and it certainly has been retained in New York by the defendant.

Answer to plaintiff's 4th question. No copies of these letters were ever taken, and were unknown to the plaintiff.

Question by defendant. Did the losses mentioned or alluded to in your 2d answer to plaintiff's question, arise before or after the sale and purchase of Reuben Withers's interest in the concern of Jno. Withers & Co?

Answer. A great deal was lost before the purchase, and a great amount afterwards; but they were all on accounts of transactions previous to the purchase.

And further he saith not.

JOHN WASHINGTON.

DISTRICT OF COLUMBIA, } *to wit:*
Alexandria County, }

The undersigned, justices of the peace for the county aforesaid, do hereby certify, that, agreeably to the annexed commission to us directed, we did proceed to take the deposition of John Washington, at the time and place mentioned in the caption; and that, after the deponent carefully read and signed

the same in our presence, he made oath, in due form of law, thereto, that it contained the truth, to the best of his knowledge and belief.

Given from under our hands and seals, this 13th day of August, 1827.

NEWTON KEENE, [SEAL.]
CHR. NEALE. [SEAL.]

3d Deposition of Jno. Washington.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Nathaniel S. Wise and Adam Lynn, gentlemen, Justices of the Peace for the County of Alexandria, in the District of Columbia, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining John Washington, in behalf of John Withers, in a suit depending in our United States' circuit court for the District of Columbia for the county of Alexandria, between John Withers, complainant, and Reuben Withers defendant. We therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid, before you, or any two or more of you, that you call, and cause to come, and diligently examine on the Holy Evangelist of Almighty God touching the matter in controversy between the aforesaid parties; and when you have examined him, and taken his deposition as aforesaid, that you return the same to our said court, certified under our hands and seals, inclosed together with this writ.

Witness, William Cranch, esquire, Chief Judge of our said court, this 13th day of June, in the year of our Lord 1827.

[L. S.] EMD. I. LEE, *C. C.*

The deposition of John Washington, taken at the tavern of Augustine Newton, in the town of Alexandria, between the hours of nine in the morning and six in the evening, of the 13th day of June, 1827, pursuant to the annexed commission and notice, to be read in evidence in a suit now depending in the United States' circuit court for the District of Columbia, sitting as a court of chancery, at Alexandria, wherein John Withers is complainant, and Reuben Withers is defendant.

First question by plaintiff. Were you well acquainted with the late firms of John & R. Withers, and John Withers & Co., and with their mode of transacting business, and of dividing the labor, and attending to business among themselves, and the manner in which the entries were made on their books of their transactions? and under whose direction, and, more particularly, of the account as stated on the cash book and petty ledger?

2d question by plaintiff. Do you know in what manner certain sums in these accounts charged for the individual expenses of Reuben Withers were made, and under whose direction; and whether the same were at the time known to, or admitted by the said John Withers, or otherwise?

3d question by plaintiff. Did not the complainant, John, object to the defendant's charges for expenses before they dissolved their copartnership?

4th question Did not the complainant, John, leave home before the defendant, Reuben, got here, about the 11th November, 1819; and did he not return about the 9th December, 1819; and were not the entries on the petty ledger, (page 112) and *them* that follow on the cash book, made before the 13th December, 1819?

5th question. From the nature of the account on the cash book and petty ledger, could Jn. Withers have known whether it was right, or not, before the notes were all taken up?

6th question. Do you know of any attempt made by the parties to settle their accounts, and what prevented a settlement; and did R. Withers render an account to John Withers, and take it away to his boarding house, and would not let him have it again, under pretence to examine it?

7th question. How long after the dissolution of copartnership of John Withers & Co. was it before R. Withers rendered to John Withers the account you speak of; and which account Reuben Withers got and kept, under the pretence of examining it more fully?

8th question. You speak of Jn. Withers being much of his time from home, engaged in *the* various concerns. Was it not principally for the firm of J. & R. Withers that took him from home?

9th question. By whom, at what time, and under whose directions were the four last entries made to the debit of Reuben Withers in the said account of John Withers & Co.; and which amount, together to the sum of $5,790, and which said sum *were* sent on in several remittances whilst R. Withers was in Alexandria, to David Dunham, of New York; and did you ever see the said sum to the credit of Jn. Withers, in any book or account kept by the said Reuben Withers?

10th question. Have you not understood that Reuben Withers was in partnership with his father-in-law, David Dunham, and that said Dunham died very rich?

11th question. Have you ever heard of, or do you know of any of the notes of John Withers & Co., which had not fallen due when Reuben Withers arrived in Alexandria, about the 11th November, 1819, other that those that make together the sum of $3,276 38, and which I contend were taken up by D. Dunham, and those that make together the sum of $19,177 74, and which last amount *were* taken up by R. Withers, after he returned to New York?

12th question. When the complainant and defendant had dissolved, or were about to dissolve, in December, 1819, was not the subject canvassed, and the question asked the said Reuben, by the said John, what amount of debt of the firm of Jn. Withers & Co. were remaining unpaid? and what did Reuben Withers state?

13th question. What amount did Reuben Withers compel John Withers to pay of the debts of John Withers & Co., that fell due after Reuben Withers got to New York, about the 20th December, 1819?

14th question. What time was Reuben Withers absent from Alexandria in the years 1818 and 1819?

15th question. Was not Reuben Withers married, or was a married man, and living in New York, in the year 1819?

16th question. What is the difference in living in New York and in Alexandria; or what would it cost one person more to live in New York than in Alexandria?

17th question. Had not Reuben Withers as free access to the books and papers generally belonging to the concern of Jn. Withers & Co., as Jn. Withers had?

18th question. Do you know any thing particular as to the entry of $2,164 17, made to the debit of Reuben Withers, on the books of Jn. Withers & Co., near the close of the account; and what did R. Withers say of that entry; and at what time?

19th question. Did the plaintiff, John, require the defendant to furnish him with an account at that time; and what did the defendant, Reuben, say?

20th question. Are you acquainted with the circumstances connected with a charge against Reuben Withers of $125, as amount deducted as interest on settlement in New York, and which charge is rejected in Master Commissioner Auld's report, and with the circumstances of the settlement alluded to, in New York?

Answer to 1st question. I acted as clerk in the late firms of J. & R. Withers, and Jno. Withers & Co, a greater part of the time they were in business; and, during the remainder of that period, conducted a business in Washington and Alexandria as a partner; was intimately acquainted with the concerns of said copartnership, and with their modes of transacting business; that Jno. Withers attended mostly to what they called the out-door business, making contracts for sales, collecting, arranging and settling their many and large claims in the country, and was much of his time necessarily absent from town, thus engaged in the affairs of said copartnership; and did not attend to the books of the concern, but was, on the contrary, for months at a time, without ever seeing them; nor do I believe he at any time examined or looked into them for any other purpose than that of settling some particular account that, in the course of business, was called to his attention. Reuben Withers went, from time to time, to the city of New York, and elsewhere, and made mostly, if not all the purchases on account of said firms; the accounts of said purchases were generally sent to the firm in Alexandria, in his own handwriting, understood to be copies of the original invoices; which copies were, when received, entered to the credit of said Reuben, on the cash book and petty ledger, by some of the clerks in the house—often by this deponent. It was but in few instances that the original invoices or account of purchases were sent on or furnished by the said Reuben. Upon the return of said Reuben to Alexandria, it was the usual custom for said Reuben and this deponent to compare the books, and to adjust and see that the entry agreed, and whatever alterations, charges, or credits were made in the books, were done under the direction of the said Reuben; John Withers not being present at any of these settlements or comparisons, that is recollected. In many instances, he was absent in the country on business of the concern.

Answer to 2d question. Those entries were made exclusively under the direction, and by order of Reuben Withers, and sometimes partly in his own handwriting, and were for the expenses of the said Reuben Withers in New York; and it is not known to this deponent whether John Withers knew any thing of them or not, until the month of December, 1819, at which time the said John positively objected to allowing them.

Answer to 3d question. He did, and said they were wrong and contrary to their agreement; and in consequence of which, in part, the clause was introduced in their contract of dissolution, making the said Reuben accountable for his transactions in New York.

Answer 4th. He did, and the entries were made during his absence.

Answer to 5th. A large proportion of the account on the cash book and petty ledger consists of notes charged and credited; many of which were then outstanding, and, until they were all taken up either by plaintiff or defendant, it was hardly possible for the plaintiff to ascertain, with any certainty, what he was bound for in New York, and, consequently, what was the balance existing between the plaintiff and defendant.

Answer to 6th. As well as I recollect, an attempt was made in January,

1822, which failed, partly on account of the charges for expenses, and partly on account of the sum of $1,000, which Reuben Withers had credited on his account, and which had not been placed to his debit on the books here. The said Reuben then took his account to his boarding house, to examine more fully into the said credit of $1,000, and did not, to the knowledge of this deponent, return with it again. This deponent further says, he heard the said John charge the said Reuben with having taken the account away, which he did not deny.

Answer to 7th. About two years.

Answer to 8th question. It was, as I see in the fall of 1818; he was in the western country, at Pittsburgh, about two months, where that firm had a very large sum due them; and, on his return, charges the firm of J. & R. Withers with about $70, *for his expenses, &c.*

Answer 9th. The four last entries that make that amount, say $5,790, were charged by this deponent during the time Reuben Withers was in Alexandria, in November and December, 1819, and was certainly either on his books, or on the account rendered. This deponent spent much time in trying to settle the account between the parties, and never heard of any objection being ever made to the said entries.

Answer to 10th question. I have heard Reuben Withers say, that he was in partnership with Mr. Dunham in New York, and have been repeatedly told Mr. Dunham died very rich.

Answer to 11th question. I have not, if there are any; the notes will show for themselves.

Answer to 12th question. There was a great deal of conversation about the time of the dissolution, which is not particularly recollected; but the deponent distinctly understood the said Reuben to say, that, after the money then in Mr. Dunham's hands was applied, there would still be due in New York about the sum of $17,000.

Answer to 13th question. The sum of $19,177 $\frac{74}{100}$.

Answer to 14th question. On reference to the books, the deponent says that the said Reuben went to New York about 1st February, 1818; returned in July; went on again in August, and returned to Alexandria in December of same year; went again to New York about 27th February, 1819, and returned to Alexandria in November of same year.

Answer to 15th question. He was married in the fall of 1818; I think in the month of September, to a daughter of David Dunham, in New York, and has continued to reside there ever after.

Answer to 16th question. The deponent cannot answer correctly what would be the difference of expense. The firm in which he is at present engaged, allow John H. Brent, their purchaser, and who resides in New York, the sum of one hundred and fifty dollars per annum on this account, which is believed to be liberal, and with which the said John H. Brent is satisfied.

Answer to 17th question. He had.

Answer to 18th question. I was present at the plaintiff and defendant's first meeting, before Commissioner Auld, when the plaintiff asked the defendant if he had credited him with the $5,011 sent David Dunham between the 26th January and 21st February, 1819, in several sums. The defendant answered, he had given the credit on the books, and opened them, and showed where the sum of $2,846 $\frac{83}{100}$, the amount of notes taken up by David Dunham, *were* charged to said Reuben; and then showed where the sum of $2,164 $\frac{17}{100}$ was also charged to the said Reuben, making together the said sum of $5,011.

Answer to 19th question. He did require the defendant to furnish an account, and the said defendant said the books contained the account. It was all there; and it was right, and he knew of no other.

Answer to the 20th question. At the close of the copartnership of J. & R. Withers and Washington, a difficulty arose in the settlement of the said concern, so far as regarded Reuben Withers; but, by an agreement between said Reuben and this deponent, the matters relating thereto *was* submitted to arbitration in New York, with an agreement that every and all matters connected with, or in dispute between, the said John and Reuben, should not come under the view of the arbitrators. The sum of $2,500, which said John had agreed to pay the said Reuben, and which was to have come into the said firm of J. & R. Withers and Washington, as a portion of the capital of the said Reuben, having never been furnished to the said concern by either of the parties, it became necessary for the arbitrators to charge the said Reuben with interest on the said sum of $2,500; and considering the matters before them entirely between the said Reuben and this deponent, they only allowed two-thirds of the interest on the same in the said settlement, leaving the other third, amounting to about $125, as a matter entirely between the said John and Reuben Of *course*, the said John did not get his proportion of the interest that was due the firm of J. & R. Withers and Washington by the said Reuben; and this deponent has since heard the said Reuben acknowledge that the arbitrators had allowed about that sum more than he claimed. And further the deponent says not.

JOHN WASHINGTON.

DISTRICT OF COLUMBIA, *Alexandria County, to wit:*

To the honorable circuit court of the District of Columbia, sitting in chancery at Alexandria:

The subscribers, who are justices of the peace for the county aforesaid, duly commissioned and sworn, respectfully certify that they took the foregoing deposition of John Washington, according to the caption thereof; and that the deponent, after having sworn in due form of law to the truth of the several matters and things therein stated by him, signed the same with his own proper hand, in the subscribers' presence. The deposition was not closed till six o'clock in the evening.

Given under our hands and seals, this 13th day of June, 1827.

N. S. WISE, [SEAL.]
ADAM LYNN, [SEAL.]

Costs $8 10, paid by the complainant.

Deposition of Ed. Pittman.

NEW YORK, *13th March*, 1827.

SIR: Be pleased to take notice, that, on Tuesday, the third day of April, 1827, at the office of John L. Graham, esq., a commissioner duly authorized to take affidavits in said State, at his office situate No. 143, Fulton street, in this city, between the hours of eight in the morning and three in the evening of that day, I shall take the deposition of Edward Pittman and others, to be read in evidence in the suit in chancery now depending in the United States' circuit court of the District of Columbia for the county of Alexandria, in which you are complainant, and I am defendant.

REUBEN WITHERS.

Mr. JOHN WITHERS, *Alexandria, Dis. of Col.*

DISTRICT OF COLUMBIA, } *sct.*
Alexandria County, }

Samuel Smith personally appeared before the subscriber, a justice of the peace for the county aforesaid and made oath, in due form of law, that he delivered, on Friday, the 16th inst., to Robert Washington, clerk to John Withers, at the store of said Withers, in the town of Alexandria, a notice, of which the above is a true copy.

Given from under my hand, this 17th day of March, 1827.

A. FARR.

Deposition of Edward Pittman, of the city of New York, clerk, produced, sworn, and examined on oath, on Tuesday, the third day of April, in the year of our Lord one thousand eight hundred twenty-seven, before me, John Lorimer Graham, a commissioner duly authorized and sworn to take affidavits in the State of New York: and, also, a notary public duly commissioned for said State, at my office situate No. 143, Fulton street, in the said city of New York, between the hours of eight in the morning and three in the evening of that day, to be used and read in evidence in a certain cause now depending in chancery in the circuit court of the United States, and the District of Columbia, for the county of Alexandria, in which John Withers is plaintiff, and Reuben Withers defendant, on the part of the said defendant.

Interrogatory first. Were you a clerk in the employment of John Withers & Co., at Alexandria, in the District of Columbia, in the year one thousand eight hundred and nineteen?

Answer. Deponent saith he was.

Interrogatory second. Who constituted the firm of John Withers & Co?

Answer. Deponent saith that he never knew any others than John Withers, the complainant in the above mentioned cause, and Reuben Withers, the defendant in said cause.

Interrogatory third. Was Reuben Withers, one of said firm of John Withers & Co., frequently absent from Alexandria, on account of the business of the firm, during the period you acted as clerk?

Answer. Deponent saith, that he thinks he commenced his clerkship with said John Withers & Co., in the month of September, in the year 1819, at which time Reuben Withers was absent from Alexandria, as deponent knows, engaged at New York and Philadelphia, transacting business for and on account of said firm; that he continued so absent, and so employed, until the month of December in the same year, when he returned to Alexandria about the time of the dissolution of the said firm. The deponent, during the absence of said Reuben Withers, frequently read the correspondence between them; and the letters of said Reuben Withers contained statements of purchases of goods made by him on account of the firm, and invoices of the same.

Interrogatory fourth. Was John Withers absent, during the time you acted as clerk, from Alexandria, on the business of the firm; and who paid his expenses?

Answer. Deponent saith that John Withers was frequently absent on the business of the firm; and he believes the expenses were charged by said Withers to the firm.

Interrogatory fifth. What is the usage among merchants as to the charging of expenses by parties who are absent on the business of the firm?

Answer. Deponent saith that he has lived with *the* several firms in different parts of the United States, and the invariable custom has been to charge all such expenses to the firm.

EDWD. PITTMAN.

This done before me, the day and year first above written.

In testimony whereof, I have hereto set my hand, and affixed my seal notarial.

[L. S.] JOHN LORIMER GRAHAM,
Commissioner to take Affidavits, &c., and Public Notary.

By William Paulding, esq., Mayor of the city of New York:

CITY OF NEW YORK, *sct.*

It is hereby certified and made known, that Nicholas Dean, whose name is subscribed, and seal of office is affixed to the annexed certificate, is the clerk of the city and county of New York, and clerk of the court of common pleas in and for the said city and county; and that full faith and credit is due to his official acts and deeds as such.

In testimony whereof, I have hereunto subscribed my name, and have caused the seal of mayoralty of said city to be hereunto affixed, this fourth day of April, in the year one thousand eight hundred and twenty-seven.

[L. S.] WM. PAULDING, *Mayor.*

STATE OF NEW YORK, }
City and County of N. York. } *ss.*

I, Nicholas Dean, clerk of the city and county of New York, and clerk of the court of common pleas in and for the said city and county, do hereby certify that John Lorimer Graham, whose name is subscribed to the annexed notarial certificate, was, on the day of the date of said certificate, a public notary in and for the State of New York, duly commissioned and sworn; and, also, a commissioner to take affidavits in and for the city and county of New York, also duly commissioned and sworn; and further, that the signature of John Lorimer Graham, subscribed to the said certificate, is in the proper handwriting of the said notary.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, this 4th day of April, 1827.

[L. S.] N. DEAN.

Commission to take the Deposition of Law. Hill and Dan'l Jackson.

DISTRICT OF COLUMBIA:

The United States of America to John L. Graham and James L. Graham, gentlemen, of *greeting:*

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining Lawrence Hill and Daniel Jackson, in behalf of Reuben Withers, in a suit depending in our United States' circuit court for the District of Columbia, for the county of Alexandria, between Jno. Withers and the said Reuben Withers. We therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you, or any two or more of you; that you call,

and cause to come, and diligently examine on the Holy Evangelist of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them, and taken their depositions as aforesaid, that you return the same to our said court, certified under our hands and seals, enclosed together with this writ.

Witness, William Cranch, esq., Chief Judge of our said court, this 10th day of July, in the year of our Lord, 1827.

EDM. I. LEE, *C. C.* [L. S.]

NEW YORK, 18*th July*, 1827.

SIR: Please take notice, that, on Monday, the twentieth day of August next, at the office of John L. Graham, esq., one hundred and forty-three, Fulton street, in the city of New York, between the hours of nine A. M. and three P. M. of that day, I shall proceed to take the deposition of Mr. Lawrence Hill and others, to be read in evidence in a certain suit depending on the chancery side of United States' circuit court for the county of Alexandria, in the District of Columbia, wherein you are complainant, and I am defendant, when and where you may attend, and put interrogatories should you see fit.

REUBEN WITHERS.

Mr. JOHN WITHERS, *Alexandria, D. C.*

DISTRICT OF COLUMBIA, } *sct.*
Alexandria county, }

Theodore Meade personally appeared before the subscriber, a justice of the peace for the aforesaid county, and made oath, in due form of law, that he did deliver a true copy of the within notice to John Withers, in the town of Alexandria, on the 23d day of July, 1827.

Given from under my hand, this 23d day of July, 1827.

N. S. WISE.

Depositions.

Depositions of witnesses, produced, sworn, and examined, on the twentieth day of August, in the year of our Lord one thousand eight hundred and twenty-seven, at the office of John L. Graham, esquire, in the city of New York, under and by virtue of a commission issued out of the United States' circuit court for the District of Columbia for the county of Alexandria, for the examination of Lawrence Hill and Daniel Jackson, *witness* in a certain cause there depending, between John Withers, complainant, and Reuben Withers, defendant, on the part of the defendant, as follows, to wit:

Deposition of Law. Hill.

CITY AND COUNTY OF NEW YORK, *ss.*

Lawrence Hill, of the city of New York, merchant, aged thirty-nine years and upwards, being produced, sworn, and examined in behalf of the defendant in the title of these depositions named, doth, to the several questions proposed to him on the part of the defendant upon his direct examination, say: that he was for several years one of the firm of the late Lindsay and Hill, of Alexandria, in the District of Columbia; and that, by the articles of copartnership, or by an agreement made at the time of entering into the co-

partnership, each partner was to pay his own private expenses; but that if he, or either of the partners left Alexandria on the business of the firm, his expenses, during his absence, was always allowed and paid by the firm. And he further saith, that he frequently went to the north on the business of the firm of which he was a copartner, and, in every instance, the firm allowed him for the full amount of his expenses, as well for travelling as board, while so absent on the business of the firm. And he further saith that he believes such allowance, so made to him, is universal in all firms.

And the said Lawrence Hill, to the several questions proposed to him on the part of the complainant, by John H. Brent, by way of cross-examination, saith: that, during the present year, he has resided for six months in the city of New York; that his family have resided in Alexandria; that he does not charge the firm for his expenses in New York; that his reason for not doing so, is, because he has taken up his permanent residence in New York. He further saith, that he has not any written agreement with his partners respecting individual expenses, and that he is not allowed any thing by the firm on account of his having to reside in New York; but that it is agreed that all his expenses for travelling between New York and Alexandria, or elsewhere, shall be allowed him, when on the business of the firm.

LAWRENCE HILL.

Examination taken, reduced to writing, and, by the witness, subscribed and sworn to, this 20th day of August, 1827, before me,

[L. S.] JAMES LORIMER GRAHAM,
Notary Public.

Deposition of Dan'l Jackson.

CITY AND COUNTY OF NEW YORK, *ss.*

Daniel Jackson, of said city, merchant, aged thirty-seven years and upwards, being produced, affirmed, and examined, on behalf of the defendant in the title of these depositions named, doth, to the several questions proposed to him on the part of the defendant, say: that he is now one of the partners of the firm or copartnership of Suydam and Jackson, of the city of New York, merchants, and that he has been engaged in three other copartnerships; and that, in all of the said copartnerships in which he has been engaged, it was understood and agreed that each partner should pay his own private expenses; but that, whenever either of the partners left home on the business of the firm, his expenses were always charged to, and paid by the firm. And he further saith, that he has been frequently absent from home on the business of the several firms of which he was a copartner as aforesaid, and that, in every instance, he was allowed the expenses incurred by him during his absence, as well for travelling as for board. And he further saith, that, as far as he knows, such allowance made to him is usual in all firms.

DANIEL JACKSON.

Examined, taken, reduced to writing, and, by the witness, subscribed and affirmed to, this 20th day of August, 1827, at the hour of one o'clock P. M., before me,

[L. S.] JAMES LORIMER GRAHAM,
Notary Public.

By William Paulding, esquire, Mayor of the city of New York:

CITY OF NEW YORK, *ss.*

It is hereby certified and made known, that James Lorimer Graham, whose

name is subscribed, and notarial seal is affixed to the above instrument, is a notary public of the State of New York, duly commissioned, and that full faith and credit are due to his official acts and deeds as such.

In testimony whereof, I have hereunto subscribed my name, and have caused the seal of mayoralty of said city to be affixed, this twenty-third day of August, in the year one thousand eight hundred and twenty seven.

WM. PAULDING. [L. S.]

Master Commr's 1st report.

REPORT 1ST.

DISTRICT OF COLUMBIA, *Alexandria county,* } *sct.*

April term, 1825.

JOHN WITHERS, *plaintiff,* *against* REUBEN WITHERS, *defendant.* } *In Chancery.*

This cause is, on the motion of the complainant, referred to Master Commissioner Auld, to state and settle the partnership accounts between the parties, in the firm of John Withers and Company; with leave to either party to have made such special statements, at his own costs, as he may think necessary.

Teste: EDM. I. LEE, *C. C.*

COMMISSIONER'S OFFICE,

Alexandria, Oct. 25, 1825.

The parties in the above named case are hereby notified, that, on Tuesday, the 8th day of November next, at the hour of ten o'clock in the forenoon, within my office in this town, I shall proceed in the execution of the foregoing order; and they are required to attend before me with their books, accounts, vouchers, and evidence, in support of their pretensions.

COLIN AULD, *M. C.*

Served on John Withers, on the 25th, and on Reuben Withers, on the 28th October, 1825. See affidavit.

Nov. 8. Parties met pursuant to notice, and entered on the investigation.
" 9. Met, and adjourned till to morrow at 10 o'clock.
" 10. Met, and proceeded in the business.

JOHN WITHERS, *plaintiff,* *vs.* REUBEN WITHERS, *defendant.* } *In Chancery.*

COMMISSIONER'S OFFICE,

Alexandria, D. C., Aug. 31, 1826.

The above named parties are required to take notice, that, on the 14th day of September next, I shall proceed to act definitively in the said cause; and, on the 21st day of said month, close the statements and report on the subject, and file the same in the clerk's office.

Given under my hand and seal, at Alexandria, this 31st day of August, 1826.

COLIN AULD, *M. C.* [SEAL.]

Served, see affidavit.

Comm'rs 2d report.

JOHN WITHERS, *complainant,*
vs.
REUBEN WITHERS, *defendant.* } *In Chancery.*

COMM'R'S OFFICE, *Sept.* 28, 1826.

In pursuance of the order of the honorable court, and in conformity to the citation served on the parties, copies of which appear on the first page, a meeting took place on the 8th day of November last, at which the complainant and his counsel, Mr Mason, and the defendant and his counsel, Messrs. Taylor and Fendall, attended. And, in their presence, I proceeded to examine the books and evidence produced by the complainant, and called for by the defendant, and to state the accounts between the parties; but this being a work of great labor, requiring much time and patient investigation, the defendant, after two days, committed the care of his interests to his counsel, and returned to New York, his place of residence; since which time, various written communications have been had with him, and personally with his counsel, and with the complainant. From the great number of cross entries, or the same transactions and sums both at debit and credit in the accounts relative to the purchases of Reuben Withers, in the books of John Withers & Co., it was considered the most proper course to exhibit them, and the transactions having a bearing on the general balance between the parties in separate columns; which has accordingly been done in the annexed statement F. The defendant having required the complainant to produce the books of John Withers & Co., John & Reuben Withers, and Withers and Washington, they were in consequence placed in my hands. The transactions in New York appear to have been conducted there (even after the firm of Jno Withers & Company was adopted,) under the firm of John & Reuben Withers, in which name the purchases were made and notes granted, but the goods were forwarded by the defendant to Jno. Withers and Company, in Alexandria, entered on their books, and disposed of, or parcelled out to their respective concerns, as their exigencies required.

The various sums at the debit and credit of the defendant, Reuben Withers, at the bottom of the statement, marked F, page 9, in red ink, are alleged errors which exist in the accounts in the books, and are here collected in one point of view. It will be perceived that the balance, without correction, would be 5,609 dollars and 60½ cents due by the defendant; where these alleged errors have been substituted, and appeared to me to be proper subjects of debit or credit, the amounts have been extended in black ink. I have adopted the same mode of arrangement on the following page, with respect to the alleged errors and omissions there pointed out, for the reasons briefly stated in the annexed notes; and it may here be observed, that the statement made is in some respects novel in its construction, but it seemed to me as the best way to bring into one point of view the various items of account in difference between the parties, and the errors, surcharges, and corrections which have been made; and the subjoined notes state briefly the grounds on which these have been admitted or rejected. It is also to be observed, that the order of reference directs, generally, "the settlement of the partnership accounts of John Withers & Company;" consequently, a literal compliance with the order would embrace all its transactions, but by the terms of the agreement of the 13th December, 1819, all those transactions were to be consi-

dered as settled so far as Reuben Withers was concerned, except as to his transactions for the company in New York; and to which matters only the parties agreed to limit it, and I have acted accordingly. The complainant objects to the charges of the defendant on account of his board and expenses in New York, which, in the aggregate, amount to the large sum of $1,756; and insists that, as by the contract between J. & R. Withers, each partner was to pay his own expenses, all that could be reasonably be demanded, would be the travelling expenses between Alexandria and New York, thrice going and returning, in the whole not exceeding $200—the charge for board in the two places being about equal. As it is a matter of some doubt, I specially state the fact with this observation, that whatever appeared on the face of the accounts on the books, I considered as coming under the review of the parties at the time of their agreement of December, 1819, and, consequently, not to be altered without palpable error or falsity was shown. A book kept by the defendant in New York, for his purchases and transactions relative to notes granted and paid by him on behalf of John Withers & Company, was required by complainant to be produced, and accordingly was placed in my custody for part of two days, but afterwards withdrawn by defendant, (who alleged that it contained other matters,) under a promise to leave it with his counsel; but it seems, through inadvertence or otherwise, he carried with him to New York, having again personally attended before me in September last for three days. In conformity to the annexed statement, marked F, I find that the defendant, Reuben Withers, is indebted to the complainant, John Withers, in the sum of thirteen hundred and sixty-three dollars and seventy-seven cents, on this 1st day of November, 1826, (being the date of closing this report,) with interest on nine hundred and sixty-five dollars 9½ cents, from the said 1st day of November, till paid.

Of the time of closing this report, the complainant and defendant, and their respective counsel, had due notice.

All which is respectfully certified.

COLIN AULD, *M. C.*

E.

DR. DAVID DUNHAM. CR.

Copied from John Withers & Co.'s Petty Ledger, page 117

1818			1819		
Dec. 26	To cash forwarded you this day -	$275	Jan. 2	By cash, paid our note - -	$265 05
				The difference between the sum at debit and credit of $9 95, appears at Reuben Withers's debit, page 6.	
1819					
Jan. 27	To cash forwarded you this day -	1,350	Feb. 18	By cash, paid our note, at R. W.'s debit, p. 6. - - - -	1,328 14
Feb. 9	To " , check on Penn. Bank -	1,000	"	By " " " "	441 45
" "	To " , " on New York -	1,000	"	By " " " "	329 42
" 20	To " , John Hooff's check -	1,588	"	By " " " "	373 30
	A Rhodes's check - - -	73	"	By " " " "	374 52
	Note. The whole of the original account (in black ink) is in the handwriting of R. W., except the balance of 2,160, and addition in the handwriting of John Washington.			This sum charged R. Withers in settling account with chd., p. 9. - -	2,164 17
		$5,011			$ 5,011

☞ See note No. 56, page 13, explaining the above statement, and the reason why it has been made.

D.

Dr. REUBEN WITHERS. Cr.

Copied from John Withers & Co.'s Cash Book, at the end, fo. 7.

1817.			1817.			
Oct. 25	To cash; this sum to take to north, "which is to go to the credit of J. & R. Withers, as their check was given," (in the handwriting of R. W) - -	3,000	Nov. 8	By merchandise pr. bill from Baltimore	1,633	94
			11	By do do Phila.	1,027	60
			P.L.Mills			
			Nov. 14	By do do New York	218	79
			Nov. 21	By cash, received of Davis -	130	
	Taken on by R. Withers, which is not charged in day book - -	185	21	By merchandise pr. bill from New York	1,160	17½
			Dec. 11	By do do do do	3,383	60
Nov. 14	Forwarded you this day - -	2,028	25	By cash, returned you $10 note counterfeit - - - -	10	
	Amount of Kyles' note, passed to B. & Thompson - - - -	438 50	6	By bill of merino shawls - -	122	92
	Balances as per contra - - -	2,132 14½		Charges account paid R. W's expenses, (in handwriting of R. W.) -	106	62
	$	7,793 64½			7,793	64½
	By charges in J. & R. W.'s books, (in the handwriting of R. W.) - -	2,132 14½		By balance due by J. & R. Withers	2,132	14½

☞ See note No. 57, page 13, explaining the foregoing statement, and the reason why it has been introduced.

Reuben Withers vs. John Withers.

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Dr. REUBEN WITHERS'S ACCOUNT—Continued. Cr.

The undermentioned notes, being for goods credited R. W. as above, are entered in the handwriting of R. Withers, on bill book of J. & R. Withers, and appear to have been paid in Alexandria, viz.

Date of bill.	Drawers.	Payable to.				
1817, Oct. 31,	J. & R. Withers	to Luke Tiernan & Sons, for merchandize by R. W.			due 2d April, 1818,	$383 88
Nov. 7,	do	to Thorborn, Thompson, & Co.,	do	do	10th May, "	389 34
11,	do	to Dunham & Auchincloss,	do	do	14th Mar. "	492 02
20,	do	to D. W. & J. Gantly,	do	do	23d " "	204 63
28,	do	to Sam'l Ward Green,	do	do	30th Jan. "	212 28
28,	do	to Randolph & Edgar,	do	do	31st May, "	508 44
Dec. 3,	do	to Thoburn, Thompson & Co., paid $471 33,	do		6th June, "	419 33
						$2,609 92

Dr. REUBEN WITHERS IN ACCOUNT WITH JOHN WITHERS & Co. Cr.

For transactions arising from his purchases in New York, &c.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1818				1818			
Jan. 31	To cash, pr. check " of J. & R. W.'s ck.	–	$400	Mar. 3	By merchandize pr. bill this date - - -	–	$5,055 76½
"	to Barnwell & Popham	–	958 82	April 1	Do do do	–	9,200 25

	"	To cash, Kettell on Rickett's, at 30 ds. d.	-		1,250		" 17	Do do do	-	4,373
	"	To cash, in spurious notes	-		15		" 27	Do do do	-	7 276 49
Feb.	16	" Newark note	-		2		May 1	Do do do	-	3,051
	23	" draft on Robertson and Kelso, 90 ds. d.	-		1,500		"	Do do do	-	2,390 21
							June 3	Do do do	-	213 69
	"	To cash on Fitch, Goodwin, & Co., 60 ds. d.	-		1,000		20	Do do do	-	2,720 40
	"	To cash remitted by Withers & Washington	-		2,953		"	By March 3d, pr. Huntress	-	3,840 20
	"	To cash paid draft, Martin and Thomas	-		545 16			Do for Phila.	-	903 50
	"	To cash, Utica bk. note, sent 17th in letter	-		10		22	Do for Balt	-	2,248 74
	"	To cash, check Union Bank, on Bk. of America	-		1,000			By cash pd. Wright & Cook for W. Gibson	-	542 65
	"	To cash, draft in favor of Kelly & McBride	-		2,000			By amt. of bills from Balt.	-	754 19
	26	To cash, Stull's dft. for nankeens, at sight	-		486			By insurance pr. Adeline	-	50 23
May	2	To cash, dft. in favor of Kelly & McBride	-		2,000			By insurance pr Malvina	-	60 03
		To cash do do	-		2,000			By 600 bxs. cotton balls, received pr. Valloms, a. 30c	-	180
		177 yds. gingham, short, 32, 10 yds. cambric, 9	-		67 89		1818 May 11	By amt. of invoices rec'd by Leopard	-	999 81½
	30	To cash, ret'd note to R. & Edgar	-		1,000			By Steely's bill of nankeens	-	486
June	12	To cash, pd. draft on Randolph	-		2,000			By fre't on case to New York	-	1 75
								By postages	-	9
	18	To cash, note to D. W. & J. Gantly	-		773 45			Settlement on book, July, 1818, p. 10.		
							Aug. 5	By Linen not in former settlement	-	382 50
								By p'd Leiper for T. Foster	-	40 70
								By p'd Alfred Gibson	-	100
							20	By merchandise pr. bill	-	5,904 65
							Sept. 2	Do do do	-	10,985
							24	Do do do	-	2,622 96
							Oct. 7	Do do do	-	448 49

DR. REUBEN WITHERS'S ACCOUNT—Continued. CR.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1818				1818			
20	To cash, note to W. F. & S. Mott - -	–	$1,073 10		By sacking from Stewart & Orrley - - -	–	$ 75 63
July 19	To cash, note to Hone, at 4 ms. - - -	–	1,676		Do do do	–	1,359 42
"	To cash, note to Dunham & Auchincloss - -	–	399 40		By paid Alfred Gibson -	–	50
18	To cash, note to D. Dunham & Co., 4 ms - -	–	506		By insurance - -	–	99 23
"	same, 4 ms. -	–	511 53		By Kyle - -	$ 390 70	
"	same, " -	–	264 50		By Dunham - -	377 82	
"	same, " -	–	350 88		By crockery - -	–	13 50
Sept. 18	same, 6 " -	–	492 25	Nov. 4	By shipment pr. schooner Eliza - -	–	4,152 37
" 20	To cash, note to Kelly & McBride -	–	969 50		By Formetto on account of Massollete - -	–	47 92
	To cash, note to D. Dunham & Co. - - -	–	293 63		By discount on drafts -	–	16 40
	same -	–	284 68		By T. Mason - -	–	3
	same -	–	225	Dec.	By invoices pr. self -	–	1,992 04
	same -	–	564 80	"	By invoices pr. Mechanic -	–	4,609 39
	same -	–	290	3	By invoices pr. Dash -	–	996
Oct. 3	To cash, note to G. & T. Meyers - - -	–	277 81		By Alfred Gibson -	–	100
					By short charge on sheetings - - -	–	15 60
					By sundry accounts for postages - - -	–	13 50

"	To cash, note to Randolph & Edgar	-	-	332	50		By discounts	-	33 01
"	To cash, note to Robert Gill & Co.	-	-	615	30		Settlement in book p. 6., Dec., 1818, p. 6.		
	To cash, note to W. F. & S. Mott	-	-	721	39	1819 Mar. 9	By am't of invoice	-	294 69
	To cash, note to Mills & Napier	-	-	309	38	28	Do do	-	3,741 59
	To cash, note to Gantley	-	-	171	86	April 19	Do do	-	2,949 89
	To cash, note to P. L. Mills & Co.	-	-	743	53	May 1	Do do	-	1,159 73
	To cash, note to John Graham, 6 ms.	-	-	1,140	24	April 13	Do do	-	307 02
	same, 7 ms.	-	-	1,200		May 15	Do do	-	3,513 94
Nov. 15	To cash, note to N. K. Toler, 7 ms.	-	-	808	15	June 13	Do do	-	2,654 74
	same, 6ms.	-	-	435	12	July 1	Do do	-	1,226 12
	To cash, note to D. Dunham & Co.	-	-	214	20	"	By 10 ps. blk. sarsenet	-	195
	same	-	-	650		20	By am't of invoice, 12th inst.	-	2,080 35
	To cash, note to G. & T. Meyer	-	-	523	09	Aug. 3	Do do	-	1,648 81
	To cash, note to Stewart & Ortley	-	-	690	16	16	Do do	-	299 44
	To cash, note to Boorman & Johnson	-	-	777	65	18	Do do	-	5,372 14
" 20	To cash, note to Dunham & Auchincloss	-	-	603	13	Oct. 4	By am't of shipment pr Abeona	-	745 53
" 21	To cash, note to Mills & Napier	-	-	121	80	Nov. 2	By am't of shipment pr. Elizabeth	-	4,277 02
							By note to Jno. Charty	236 98	
							By 4 notes at 6 ms.	1,549 53	
							By note to Dunham & Co.	1,164 57	
							By discounted note	1,974 54	
							By note to Sam'l Redman	241	
							By note to Wm. Inman	528 30	
							By note to James Hood	366 22	
							By auction	210	
							Do	325 44	

Dr. REUBEN WITHERS'S ACCOUNT—Continued. Cr.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1818				1819			
	To cash, note to Benjamin Marshall, 8 ms	–	$462 50		By auction - -	$885	
Dec. 31	To cash, note to Marsh & Brooks - - -	–	448		By note to Kyle - -	403 76	
					By Dunham & Co. -	3,011 40	
Pd this d'e, 1819, June 9					By cash, ch'd on wool -	–	$ 7 08
					" disco't Union Bank	–	20 96
					" note to Salles	393	
	To cash, note to L. Salles, 12 ms. - -	–	637 54		" notes to Mott's -	267 36	
					" D. Dunham, postage -	–	3 46
	To cash, note to Jno. Taylor, 7 ms. -	–	1,034 88		By cash, note to Toler -	382 62	
	To cash, note to D. & W. Kyle, 4 ms. - -	$390 70			By cash, sundry dis. on notes { 10 / 13 86 / 11 35		
	To cash, Canton crapes ret'd 19 ps., 12 50 -	–	237 50			–	35 21
	To cash, dft. at 10 ds., fav. W. L. Smidt - -	–	1,220 79		By cash, freight on flour -	–	75
					" D. Auchincloss, note - - -	375 78	
	To cash, am't due Wm. Stewart, Balt - -	–	215		By cash, charges on flour -	–	5 02
	To cash p'd O H. Wilson, Balt , pr. W. W. -	–	161 57		" balance on st'g bill	–	8 29
					" note to Smith, Mc Call, & Co. - -	418 75	
	To cash, dft. at 3 ds. in fav. Fobrell & Comly -	–	358 40		By cash, note to Dunham -	539 18	

	To cash, am't ch'd by J. & R. W., being a bal. due them on settlement with Stewart and Ortley, previous to last purchase, [transferred to Nelson, vide note 46]	-	-	266 38	"	note to S. & Ortley	368 83	
	To cash, John Withers of Emmet & White, [settlement in book, July, 1818, page 10]	-	-	911 17	"	note to David Adee	417	
					"	note to Dunham	378 40	
					"	note to Redman	382 20	
					"	note	153 04	
					"	note	748 69	
					"	D. & W. Kyle	294 69	
					"	Dunham & Co.	1,042 94	
1818					"	Meyer in full of snake root	-	64 65
Aug. 5	To cash, am't taken to New York, including spurious notes & Gibson's $100, Foster 40 70	-	-	1,019	By cash, W F & S. Mott		367 28	
					"	tax in New York	-	8 60
					"	note to Mott	158 55	
					"	note at auction	770	
29	To cash p'd dft. in fav. of S. & Ortley	-	-	1,000	"	note to Dunham	325 65	
						same	964	
"	To cash, Patton on Henderson & Carrones	-	-	1,000	"	note to Mott's	779 47	
					"	note, auction	486 44	
Oct. 12	To cash, dft. sent this day	-	-	1,360 26	"	note to Robbins	195	
21	" dft. from L. & Hill	-	-	1,100	"	note, auction	702 53	
26	" post note	-	-	1,000	"	" "	149 12	
Nov. 13	" note to W. F. & S. Mott	-	-	577 13	"	note to Dunham	305 76	
					"	same	924	
21	To cash, dft. in fav. of Mills & Napier	-	-	528	"	note to Toler	476	
					"	note to D. Dunham & Co.	-	462
Dec. 28	To cash rec'd of D. Dunham for 2 hhds. cider	-	-	54 75	By cash, note, same, err.			
"	To cash, W. F. & S. Mott	-	-	446 65	"	note to Gantley	217 29	
"	" W. & Washington, $5 spurious	-	-	4	By am't of purchases for C. W. Murray	-	-	3,140 25

Dr. REUBEN WITHERS'S ACCOUNT—Continued. Cr.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1818				1819			
Dec. 28	To cash, dft. on Blanchard	–	$1,391 70	Nov.	By am't of shipment pr. William & Mary	–	$4,974 57
	" am't L. & Hill's dft.	–	1,000		By cash p'd Alfred Gibson	–	160
Date when due.					" note to Dunham	$491 11	
1819					" sundry postages	–	47 32
Feb. 18	To cash, D. Dunham & Co.	–	9 95		By balance, carried down	–	2,870 27½
"	same	–	1,328 14				
"	same	–	441 45				
"	same	–	329 42				
"	same	–	373 30				
	same	–	374 52				
	same						
	same	–	462				
	same	$924					
	same	1,549 53					
	same	1,164 57					
	To cash, note to John Charter	236 98					
April 3	To cash, note to L. Salles	–	645				
"	" note to D. & R. Lambert	–	1,638 78				

	To cash, note to Jas. Hood -	366 22	
	" note to Lord & Ormstead - - -	–	448 39
	To cash, note to David Adee	–	260 17
	" note to D. W. & J. Gantley - -	217 29	
	To cash, note to H. K. Toler	476	
	" note to J. & T. Meyer - -	–	2,146 09
	To cash, note to D. Dunham & Co. - - -	210	
Oct. 20	To note to Dunham & Co. -	325 44	
	same	885	
30	To note to D. & Auchincloss	–	532 19
Nov. 10	To note to Dunham & Co. -	3,011 40	
22	To note to Kyle - -	403 76	
	To note to McViccar -	–	328 18
	To note to Wm. Inman -	528 30	
	To note to M. R. & Gallop	–	641 25
	To note to L. Salles -	393	
	To note to Tho. Suffern -	–	427 52
	To note to Meyer, due 18th May, 1819 - -	–	966 36
	To note to Motts - -	267 36	
	To note to Stewart & Ortley - - -	368 83	
	To note to Toler - -	382 62	
	To note to D. & Auchincloss	375 78	
	To note to Sam'l Redman, [settlement in book, Dec., 1818, p. 6.] - -	241	

Dr. REUBEN WITHERS'S ACCOUNT—Continued.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1819				1819			
Mar. 8	To cash transferred you -	–	$300				
13	Do do -	–	400				
April 1	Do do -	–	325				
2	Do do -	–	920				
3	To check br. bank New York, for Murray -	–	3,000				
May 5	To dft. on Henderson & Carones - - -	–	1,000				
8	To dft. on Bank Penn. -	–	685				
10	To cash remitted - -	–	600				
11	To dft. on Rice and Thaxter	–	1,380				
21	To checks - -	–	605				
28	To dft. on William Barnwell	–	1,237 50				
June 5	To check, &c., &c. -	–	701				
9	To check and notes -	–	514 88				
10	To cash - - -	–	150				
17	Do - - -	–	280				
	To proceeds of 200 bbls. flour - - -	–	1,250				
19	To Bank of Pennsylvania	–	340				
"	To bacon, 2,127 lbs., 255,24 hhds., 3 sold for -	–	241 32				

July	1	To cash p'd Harper's note	–	1	75
	7	To cash	–	1,506	
	17	To Withers & Washington, ck. on N. York	–	310	
	24	To cash	–	1,050	
Aug.	2	To cash in U. States' notes	–	110	
	3	To cash	–	260	
	4	Do	–	200	
	5	Do	–	200	
	10	Do	–	500	
	16	To note to Smith & McCall	–	1,006	75
	21	To cash	–	600	
	24	Do	–	351	
	27	Do	–	300	
	30	Do	–	200	
Sept.	2	Do	–	350	
	"	Do U. S. note	–	20	
Sept.		To cash	–	365	
		To error in Fickling & Chambers	–	3	72½
		To cash (500, 400, 560)	–	1,460	
	15	To error in shirt buttons, &c.	–	8	75
	22	To cash (920, 700, 200)	–	1,820	
	30	Do	–	300	
Oct.	3	Do	–	1,000	
	8	Do p'd dft.	–	300	
	"	Do in bank notes	–	1,515	

Dr. REUBEN WITHERS'S ACCOUNT—Continued. Cr.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1819							
14	To cash, in notes, &c. -	–	$815				
21	Do do -	–	400				
28	Do do -	–	775				
30	Do in dft. - -	–	80				
Nov. 3	Do U. S. notes -	–	200				
6	Do do -	–	900				
8	Do in dft. - -	–	48 91				
	Do of Emmett&White	–	160 23				
	To note to D. & W. Kyle -	$294 69					
	Do Mott - -	367 28					
	Do Dunham & Co. -	539 18					
	Do do -	770					
	Do Mott - -	158 55					
	Do Dav. Adee -	417					
	To our note disc'd in N. York - - -	1,974 54					
	To note to Dunham - { 378 40; 325 65; 964; 153 04; 748 69 }	2,569 78					
	To note to Smith & McCall	418 75					

Do D. Dunham & Co., 1,042 79 - -	1,042 94	
To note to Mott - -	779 47	
To auction, [corrected p. 10]	–	2,124 63
Do - -	702 53	
To note to Boorman & Johnston, [corrected p. 10] -	–	325 50
To note J. F. Randolph, [corrected p. 10] -	–	389
To note to Redman -	382 20	
Do - - -	–	283 68
Do - - -	149 12	
Do - - -	–	401 38
Do - - -	486 44	
Do to Robbins -	195	
Do to Mott - -	–	386 66
Do to C. H. & H. Meir	–	835 90
Do to Dunham & Co. -	305 76	
Do to Dunham & Auchincloss - -	–	719 71
To note to W. & Washington	–	585 11
Do to J. F. Randolph	–	488 26
Do to Jno. Givan -	–	442 25
Do to H. K. Toler -	–	420
Do to W. & Washington - - -	–	1,409 73
To note to G. & T. Meyer, [corrected p. 10] -	–	487 25
Do do -	–	765 50
To note to Wm. James & Co. - - -	–	806 35

DR. REUBEN WITHERS'S ACCOUNT—Continued. CR.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
1819	To note to D. Dunham & Co.	–	$640 67	1819			
	Do do 729 / 316 69 / 842 40 / 900 13 / 149 50	–	2,937 72				
	Do W. F. & S. Mott -	–	164 30				
	same -	–	364 44				
	Do Dunham, 249 08 / [corrected p. 10] 455 87	–	704 95				
	To note G. Gimson & Co. -	–	182 10				
	Do Taylor & Wilder -	–	408 90				
	Do Dunham & Auchincloss - - -	–	249 90				
	To note Benjamin Marshall	–	1,200 30				
	Do Dunham & Co. - 639 15 / 534 32 / 698 20	–	1,871 67				
	same - -	$491 11					
	To amt. of bal. due by D. Dunham on ac't, Jan'y and Feb., 1819 -	–	2,164 17				

	To commission from C. W. Murray - -	–		103 91					
	To cash for Alfred Gibson -	–		160					
	Do Orange bk. note, $5 pro. - - -	–		4 95					
	To note sent by W. & Washington - -	–		5					
	To amt. of note end'd by Jno. Stewart, [corrected p. 10] - - -	–		729					
	Do do -	–		316 69					
	To am't of note end'd by W. & Washington - -	–		249 08					
	Do do -	–		455 87					
	To note D. Dunham & Co. -	377 82							
		$ 25,139 94		120,767 17½			$ 25,139 94		120,767 17½
	The following sums in the original ac't are objected to, viz.		No.			The following sums at the credit of the original ac't are objected to on various accounts:		No.	
1818 Feb. 16	To cash sent in letter -	$ 2	1		1818				
Aug. 10	To note to Hicks, Lawrence, & Co., 6 ms. - -	283 84	2	$283 84	June	By cash paid bill to John Kelly, due 14th May -	$152 25	12	$152 25
"	same, ms. -	105	3	105		By cash, paid bill to Lawrence, Rapley, & Co., 28th			
12	To note to Mott, 5 ms. -	575 29	4	575 29		Nov., 6 ms. - -	138 13	13	138 13
1819 Aug. 2	To one $10 note - -	10	5	10	May 11	By am't of R. Withers's expenses in N. York, and			
1818 Sept. 1	To note D. Dunham & Co., 6 ms. - - -	180	6	280		travelling - -	375	14	375

Dr. REUBEN WITHERS'S ACCOUNT—Continued. Cr.

		Amounts both at debit and credit; original account.	No.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	No.	Actual transactions between the parties.
1819					1818				
Nov.	To note D. Dunham & Co., 6 ms.	$212 27	7	$212 27	Dec. 3	By cash, p'd note to D. W. & J. Gantley	$217	15	
" 17	To cash forwarded D. Dunham & Co.	2,000	8	2,000		By am't of R. W.'s expenses in N. York. See J. W. & Co., jour. 269, led. 53	427	16	$427
" 21	To cash, Lindsay & Hill's dft. on C. Beers, forw'd	800	9	800	1819	By cash, paid Hicks, Lawrence & Co.'s note	283 84	17	
" 27	To cash sent D. Dunham, dft. on Phil.	1,300	10	1,300		Do do	105	18	
Dec. 7	Do do	1,690	11	1,690		By cash, paid W. F. & S. Mott's note	575 29	19	
	See notes, page 11, on the various items at debit and credit, and numbered as above, &c.					By am't of R. R. W.'s expenses in New York, 9 ms.	954	20	954
						By cash p'd J. Graham, sum collected from D Bussard, 920 76 disc't 1 pr. cent.	911 56	21	911 56
		7,158 40				By cash p'd note to Dunham & Co.	280	22	280
	To bal. brought down 2,870 27½ / 2,739 33			2,870 27½		Balance 2,739 33	4,419 07		
		5,609 60½				By balance, corrected	–		6,888 73½

*Amount due by R. W., according the accounts stated in the books.			$	10126 67½
To am't remitted him by W. & Washington, Feb. 11. 1818, in check off. of pay and deposite, New York. See letter R. W. to W. & W. and J. W. & Co. See letter A - -	1,000	23		1,000
To am't of note ren'd by John Withers to him. See R. W. to J. W. Feb. 10, 1818. See letter B .	10	24		
To 7 yds. Marseilles, at 40 cts., not extended. See end of cash book, page 8 - - -	2 80	25		2 80
To 361 yds. check, at 34 cts. See R. W.'s letter of 11th June, 1818, and end of cash book, p. 18. See letter C - -	122 74	26		
To am't of ck. on Farmer's Bank, by W. & W., in R. W.'s handwriting, taken to New York by him. See ck. D - -	250	27		250
			$	10126 67½
By am't of invoice pr. Eliza, Capt. Weeks, 9th Nov., 1819 - - -	2,816 46	38		2,816 46
By Henry Jackson's dft., *returned* at debit on 8th page	48 91	39		
By auction paid for in three notes to D. Dunham, due 21st Nov., $1,588 35, $186 28, $350, 1819, at debit, 8th page - -	2,124 63	40		2,124 63
By discount on Savannah notes, $400, part of $701, ent'd 7th page - -	12	41		
By note to Boorman & Johnson, 4th June, 1819, at 6 ms, due 7th Dec. at debit, 8th page - -	325 50	42		325 50
By note to J. F. Randolph, 4th May, 1819, due 17th Nov., 1819, at debit, 8th page - - -	339	43		339
By note to G. & T. Meyer, 17th May, 1819, due 20th Nov., 1819, at debit, 8th page - - -	487 25	44		487 25
By proceeds of goods sold in Alex., by J Withers & Co for J. Graham, of N. York	235 40	45		

DR. REUBEN WITHERS'S ACCOUNT—Continued. CR.

1819		Amounts both at debit and credit; original account.	Actual transactions between the parties. No.		1819		Amounts both at debit and credit; original account.	Actual transactions between the parties. No.	
	To am't rec'd by him in New York on ac't of John A. Stewart, and p'd J. A. S. by J. Withers & Co. -	$200	28	$200		By bal. due J. & R. Withers on settlement with Stewart & Ortley, previous to last purchase, charged page 6 - - -	$266 38	46	
	To overcharge in invoice, Oct., 1819, invo. book, 72	10	29	6		By note twice credited, say debited, page 9 - -	316 69	47	
	To am't taken by him out of J. W. & Co.'s cash, Feb. 2, 1819. See cash book -	20	30			By cash, p'd H. B. Gibson *in full*, May 22, 1818 -	127 75	48	
	To am't taken by him for coal, and negro hire, Feb. 9, 1819 - -	54	31			By cash, p'd Randolph & Edgar in full, June 1 -	63 88	49	
	To bal. of his ac't on books of J. W. & Co. -	173 45	32			By cash, expenses for N. Keene, Aug. 7, 1818 -	3,503 50	50	
	To cash got of Withers and Washington to pay Mrs. Eveleth, for board of himself and family, March 5, 1819 - - -	152	33			By cash, p'd D. Dunham, note at cr., page 6, and dr., page 9 - -	377 82	51	
	To bal. of his ac't with W. & W. - -	60	34			By postages, Nov. 18, 1818	1 13	52	
	To am't deducted as int. at settlement in New York -	125	35			By 2 yds. cloth at $8 16, part of 3 pr., bo't of D. Dunham. See invoice pr. Eliza, and J. Stewart's letter annexed - -	16 32	53	

To am't of note to D. Dunham, cr'd twice -	265	05	36	265	05		By am't of notes entered at debit, p. 9, being twice charged, say 729 and 316 69, page 9 - -	1,045	69	54	1,045	69
To difference between the sum rec'd from C. W. Murray, by J. W. & Co., and the sum for which R. W. takes credit 3,140 25 3,000	140	25	37				By notes twice { 249 08 / 455 87 } charged, p. 9	704	95	55	704	95
To the following notes p'd to Reuben Withers by J. & R. Withers & Washington:							By am't at debit of R. Withers, p. 8, being in fact the aggregate of these notes, Nos. 64, 65, and 66, now brought to his debit on this page - -	–			1,409	73
Note to Heard, p'd 7th Feb, 1820 - -	323		56	323		1819 Dec. 13	By am't stipulated to be paid in money or goods, by John Withers to Reuben Withers, pr. agreement of this date - -	–			2,500	
Note to Dunham, p'd 8th March, 1820 - -	338	34	57	338	34							
Note, Heard's auction, p'd 9th May, 1820 -	109		58	109		1826 Nov. 1	By bal. due by R. W. at this date - - -	–			1,363	77
Note, C. H. & H. Meir, p'd May 4, 1820 -	971	02	59	971	02							
Note, Heard's auction, p'd 9th May, 1820 -	324		60	324								
Note, Heard's auction, p'd 9th May, 1820 - -	291	71	61	291	71							
Note, Heard's auction, p'd 9th May, 1820 -	122	50	62	122	50							
Note, Heard's auction, p'd 24th Dec., 1819 -	216	42	63	216	42							
Note, Heard's auction, p'd 1st March, 1820 -	288	98	64	288	98							

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DR. REUBEN WITHERS'S ACCOUNT—Continued. CR.

		Amounts both at debit and credit; original account.	Actual transactions between the parties.			Amounts both at debit and credit; original account.	Actual transactions between the parties.
			No.				No.
1819.	Note, Heard's auction, p'd 1st March, 1820 -	$228 88	65	$228 88			
	Note, Heard's auction, p'd 1st March, 1820 -	891 87	66	891 87	1,409 73 *		
1826	*To his dft. on J. & R. Withers, due 5th Oct., 1818 -	377 82	67				
Nov. 1	To interest on $965 2½, from 13th Dec., 1819, till this date, 7 years, less 42 d's -			398 67½			
				$13,116 98			$13,116 98
	To bal. pr. contra, due by R. Withers this date -			1,363 77			
	Interest on $965 9, from 1st Nov., 1826, till paid.						

NOTES.

No. 1. This is an error in charging R. Withers with the same sum twice.

Nos. 2, 3, 4. These three notes appear to have been paid in Alexandria, by Jno. Withers & Co., out of their bank funds, (see ac't with Union Bank,) and consequently ought not to be at the credit of R. W., but, on the contrary, at his debit, in as much as the goods for which they were granted are at his credit.

5—seems to be correct from the entry in cash book. The sum remitted Aug. 2, 1819, was $120, and not $110.

6. This note was given to D. Dunham & Co. for goods at the dr. of J. W. & Co., and cr. of R. W., and paid by him; and since it has been introduced *at all* into the account, an equal sum ought to appear both at debit and credit, but, as it stands on the book, the debit side falls short $100.

7. The amount is not extended to the debit in the original account, which is an omission.

8, 9, 10, 11. These sums were remitted D. Dunham & Co., it appears, while R. W. was in Alexandria, on account of purchases at the credit of R. W. in the books, and ought to be charged.

12, 13. These notes were paid by R. W. out of funds with which he is charged—at least there is no evidence to the contrary, and they appear at his credit with John Withers and Company, page 9 of cash book.

14, 16, 20. These charges appear in the original account on the books. (See cash book, p. 2, 6, 13, and journal 269, &c., &c.) See also J. & R. Withers's day book for J. W.'s expenses, charged p. 323, 336, 346, and R. W. 313, and it would *now* be improper to disallow them.

15. This note appears at the credit of R. W. twice in the book, which is an error.

17, 18, 19. The same as 2, 3, 4, at debit, but erroneously put to the credit of R. W., as before explained; the notes having been paid in Alexandria.

21. A correct credit to R. W. being the amount of money collected in Alexandria, but paid by him in N. York.

22. This is the same amount as at debit No. 6, a cross entry.

23. It appears from John Withers & Co.'s bank book, that they drew a check, Feb., 1818, for $1,000. Withers and Washington, on the 11th of that month, credit J. W. & Co. $1,000, and also debit them $1,000, transmitted to R. Withers at New York, together with $450 on account of Withers and Washington. This remittance of $1,000 does not appear either in the books of John & Reuben Withers, or John Withers & Co., or, in other words, W. & W. *is* neither debited with the amount of the check, nor credited for the remittance made; nor is Reuben Withers in any manner debited for it, which appears clearly to be an omission.

24. The letter of 10th Feb., 1818, is evidence that this note of $10 got into the hands of R. Withers, and he has not shown that he ever paid for it. *It appears to have been returned.*

25. This amount ought to be extended and charged.

26. The letter acknowledging receipt of the checks is addressed to Cave Withers, who was a brother of John Withers, and the principal assistant in the store of J. & R. Withers, or John Withers & Co. On investigation, it appears those goods were returned to Alexandria.

27. This check of Withers & Washington, on the Farmers' Bank, is in the handwriting of Reuben Withers, and is charged to him on the books of J. W. & Co., jour. 288, led. 83, and said "to be taken with him to the north."

See also Withers and Washington's journal 106, ledger 64, and check filed D. Upon consideration, it would seem to be chargeable to the New York transactions of R. W.

28. This amount was paid out of the check of John Withers & Co., in Alexandria, and the cash account is credited therewith in the handwriting of R. W. It was on account of goods sold by R. W. in New York, for J. A. Stewart. It is not charged to Reuben Withers in the ledger of J. W. & Co., and, consequently, not under the review of the parties at the time of the compromise

29. The invoice in which this mistake is committed is made out in the handwriting of R. Withers, but it is not to the extent claimed, being only $6, arising from an error in controverting £142 16 sterling into dollars.

30. The cash account of John Withers & Co. is credited for this amount in the handwriting of R. Withers, but not posted to his debit in ledger. This item stands in the same situation with No. 28, only R. W. did not receive the money in New York.

31. This item is also credited to cash by R. Withers, and his account charged therewith in ledger, fo. 83.

32. As the account of R. W. stands in the ledger, the balance would be
250, 20, 54.
$497 45; but if from it is taken the amounts before entered, (No. 27, 30, 31) making together $324, the difference would be the amount claimed. It is conceived, that, unless the amounts charged against R. W. in the ledger, are connected with his New York transactions, it is improper to charge them in the statement now to be made.

33, 34. The balance of R. Withers's account with Withers and Washington being $212 28, and which includes the item of $152, is carried on the 15th December, 1819, to the debit of John Withers, "as assumed by him." The entry is in the handwriting of John Washington, the acting partner of Withers and Washington.

35. This amount, as explained by J. Withers, is understood to be a charge allowed as interest in the settlement of the claim of R. W. on J. & R. W. & Washington, by arbitrators in New York, when, as is contended, R. W. had funds in his hands. If so, interest on the balance which may be found due by R. W. will prove sufficient compensation.

36. This amount appears *twice* at the *debit*, and *twice* at the *credit* of R. Withers in the original account. On 28th December, 1818, J. Withers & Co. remitted D. Dunham $275, to pay their note of $265 05. The difference of $9 95 is charged to R. W., as received by him from D. D. & Co. in preceding account. If the note was for goods purchased by R. W., for which he has credit, then he ought to be charged with it—and nothing to the contrary has been made to appear. The note seems to have been granted for a part of the goods at R. Withers's credit, Sept. 2, 1818, amounting to $10,985 Vide invoice book, page 49.

37. On the 3d April, 1819, J. Withers & Co. remitted R. Withers a dft. on New York in favor of C. W. Murray for $3,000, which is charged to R. Withers in the books or original account, and the following memorandum made: "We are to credit R. Withers with the amount he laid out for C W. Murray, not exceeding $2,000." See p. 117, p. b. led. In p. 2, end of cash book, the account beforementioned is credited $3,140 25, as the amount of purchases for Murray. J. W. contends that this sum exceeding the amount put in R. W.'s hands for the special purpose of being applied to

Murray's use, R. W. ought to be charged with the excess, alleging, too, that R. W. must have received it in New York from Murray; of which, however, there is no proof sufficient to satisfy my mind. In page 9, R. Withers charges himself $103 91 for commission received from Murray's business, which it would seem was entirely distinct from that transacted for J. W. & Co., leaving an over credit of $36 09 only, a very small sum for an agent and *partner* to exceed his orders.

38, 40, 42, 43, and 44. Upon being fully explained to the complainant, and the vouchers shown to him, are admitted as proper credits to the defendant.

45. There is no evidence to show that the defendant is entitled to this credit as claimed.

46. This amount stands charged, page 6, to Reuben Withers; and although the entry relative to it in the books of J. and R. Withers (day book, page 30,) is not clear and explicit, yet as in the settlement of R. W.'s account in the early part of 1818, (end of cash book, p. 12) it is charged him, of which it appears he was cognizant, having written below it on same page; and, moreover, the money or balance being owing and due by Stewart & Ortley, of New York, with whom he had transactions, (see invoice book,) it is believed to be correct. See also invoice book, page 27, 35. A note for $266 38 appears to have been taken from S. & O., and passed by deft. to Neilson, Baltimore, in payment of goods at cr., (p. 5) 22d June, 1818. This is conclusive. See invoice book, p. 26.

47. Merged in No. 54.

48, 49, 50, 52 and 5°. There does not appear sufficient evidence to warrant charging the plaintiff with these items.

51. This amount ought not to be credited to the defendant, for, from any thing that appears, the note was granted D. Dunham for goods purchased by him in New York, for which he has credit, and consequently ought to pay the note. Vide invoice B, page 16.

54, 55. These items are admitted as proper credits to the defendant.

39. The draft of Henry Jackson, it is true, was returned to John & R. Withers & Washington, and charged by defendant to them. See I.

41. The Georgia Bank notes were passed by defendant for goods without discount. See letters marked C.

56. Statement E, page 4. The defendant objects *now* to the balance of $2,166 17 being charged to him, as in page 9, alleging that he never received it from Mr. Dunham. The remittances were made by R. W. himself, while in Alexandria, out of the funds of John Withers & Co., in order to *retire* certain notes of J. & R. W., issued by him in New York for goods, the amount of which is at his credit with John Withers & Co. The notes retired are at the debit of R. W., (page 6) amounting to $2,846 83, and the amount of remittances being $5,011, the aforesaid balance of $2,164 17 remained in Dunham's hands unappropriated. R. W. was the son-in-law of Mr. Dunham, who died rich, and with whom he had transactions to the amount of many thousand dollars afterwards. It is moreover introduced into the account in John Withers & Co.'s books, into which account, afterwards, he brings his charge of expenses in New York; and he is in possession of the notes retired by Dunham, a proof which he admitted while here, that he had settled the account, and *must* have received the balance.

57. Statement D, page 4. The defendant has also hinted that he expects a credit, which he says has been omitted, for goods purchased by him in the fall of 1817, to the amount of $7,547 02½; but he seems to have forgotten

the remittances and payments made on that account, and the final settlement thereof made by himself, as exhibited in the beforementioned statement. These transactions were for J. & R. W., and not J. W. & Co. Some objection has also been made to the charge against him on the 23d Feb., 1818, of $2,953, which appears to have been the amount of remittances made through Withers & Washington, to him, on New York, and transferred to the debit of John Withers & Co. in the books of the former; since which time *two* settlements appear on the books of his account rendered by himself. The objection appears to be ill grounded.

56, 57, 58, 60, 61, and 62. These notes appear to have been granted for a part of the goods which compose the invoice, by the Eliza, Weeks, the amount of which being $2,816 46, is at R. Withers's credit, page 10.

59, 63, 65, and 66. The first mentioned note is for part of the goods by the Elizabeth, entered to R. W.'s credit, 7th page, to the amount of $4,277 02. See invoice book, p. 73. The other three notes seem to have been granted for goods, part of $5,372 14 to R. W.'s credit, also on the 7th page. See invoice book, p. 71.

64. The transaction which gave rise to this note is not perceived. It is however to be observed, that all the beforementioned notes, from No. 56 to 66, both inclusive, are stated in the documents herewith filed, marked H and I, to have been paid by Reuben Withers, on account of J. & R. Withers. It is further to be remarked, that all the other notes mentioned in list H, had previously been charged to Reuben Withers in the accounts in the books, and in the preceding statement F, pages 8 and 9.

67. This acceptance has been produced by the complainant; yet, notwithstanding, I am of opinion, from an examination of the various entries in the books about the time it became due, that it must have been paid in New York by R. W., and, therefore, it was correctly placed in the original account in the first instance. See J. W. & Co.'s day book, p. 208, also invoice book, p. 16.

Exhibits returned with report.

G. Transcript of original account from the books.

66, H. List of notes furnished by R. Withers, chargeable to John Withers.

" I. Account of R. Withers with J. & R. Withers & Washington, into which the abovementioned notes are introduced.

38, K. Invoice of shipment by the Eliza, Weeks.

40, L. Notes charged to R. Withers on account of purchases at auction, $2,124 63.

42, 44, M. Notes paid by R. Withers in New York, amount, $1,151 75.

23, A. Two letters from R. Withers, acknowledging receipt of $1,150, of which $1,000 was on account of J. Withers & Co.

24, B. R. W.'s letter of 10th Feb., 1818, to John Withers.

26, C. R. W.'s letter of 11th June, 1818, about Canton crapes and checks.

27, D. Check on Farmers' Bank, 26th Feb, 1818. Withers & Washington, by R. W.

41, E. R. Withers's letter of 14th Feb., 1818, relative to Georgia Bank notes.

2 a 4, F. Note to Hicks, Lawrence & Co., & Wm. F. & S. Mott; paid in Alexandria.

26, G. Letter of 22d March, 1819; clothes and checks returned.

67, H. Acceptance for $377 82.

I. Citations served on the parties. Agreement to postpone, &c.

COLIN AULD, *M. C.*

No. 2.

Master Commissioner's 2d Report.

November term, 1826, 14*th day.*

DISTRICT OF COLUMBIA, *Alexandria County*, } *sct.*

JOHN WITHERS, *complainant*,
vs.
REUBEN WITHERS, *defendant.* } *In Chancery.*

Master Commissioner Auld having returned his report, it is, by consent of parties, agreed and ordered that the same commissioner do proceed to take such further accounts as either of the parties may require, so as such account be taken before the 1st day of February next. And it is further agreed, that all exceptions to the account heretofore taken, or to that now authorized, be filed in the clerk's office on or before the 1st day of March next.

A copy, teste: EDM. I. LEE, *C. C.*

COMMISSIONER'S OFFICE,

January 31, 1827.

The commissioner begs leave to report, that no new matter, to enable him to state a further account under the foregoing order, has been produced by either party.

Reference is craved by the complainant to the affidavit of John Washington, filed in this suit, to prove that John Withers objected to Reuben Withers's charges for expenses about the time of entering into the agreement to dissolve, &c., and which your commissioner allowed as credits to R. Withers, for reasons specially stated in his former report; and the defendant has requested your commissioner to state that a notice, of which the paper writing, marked A, is a true copy, was delivered to John Withers on or about the 20th instant.

Respectfully submitted,
COLIN AULD, *M. C.*

A.

To JOHN WITHERS, esq., *Alexandria.*

SIR: You will be pleased to lay before Commissioner Auld all the notes charged, (excepting those which Reuben Withers, in writing, directed should be charged,) as having been paid by you to, or on account of Reuben Withers as aforesaid, while acting in the capacity of a partner with you in trade, in order that their correctness or otherwise may be ascertained. You are also required to produce before the aforesaid commissioner, a certain letter addressed by Reuben Withers, either to John Washington, or J. & R. Withers & Washington, which produced Jno. Washington's reply on behalf of the firm, dated 8th December, 1820. These letters relate to certain sums of money sent to the late David Dunham, of New York, and improperly charged to Reuben Withers; also, the amount of your expenses incurred and allowed you on account the business of the late company, of which Reuben Withers was at the time a partner, in your trip to Pittsburgh or Wheeling, or to both. The production of these papers before the commissioner afore-

said, is required without delay, to enable the defendant to make defence in a suit in chancery referred to Commissioner Auld for report; in which suit you are complainant, and the aforesaid Reuben Withers is defendant.

CHR. NEALE, *for Deft.*

ALEXANDRIA, 19*th Jan.*, 1827.

A.

LIST of notes charged by John Withers to Reuben Withers, subsequently to the dissolution of the copartnership of J. & R. Withers, and John Withers & Co., to wit:

Note to Redman		$'283 68*
Do		'401 38*
Mott		'386 66*
C. H. & H. Mier		'835 90*
Dunham & Auchincloss		'719 71*
Withers & Washington		'585 11*
J. T. Randolph	p. 8,	'488 26*
John Givan		'442 25*
H. K. Toler		'420 *
W. Washington		1,409 73*
G. & T. Mier		'765 50*
Wm. James & Co.		'806 35*
D. Dunham & Co.		'640 67*
		'729 *
	p. 9,	'316 69*
		'842 40*
		'900 13*
		'149 50*
W. F. & S. Mott	p. 9,	'164 30*
		'364 44*
J. Gimson & Co.,	p 9,	'182 10*
Taylor & Wilder,	p. 9,	'408 90*
Dunham & Auchincloss,	p. 9,	'249 90*
Ben. Marshall,	p. 9,	'1,200 30*
Dunham & Co.		'639 15*
	p. 9,	'534 32*
	1,871 67,	'698 20*
W. Washington		'249 08*
(Twice charged in p. 9. See No. 55.)	p. 9,	'455 87*
Hicks, Lawrence & Co.,	No. 2,	283 84
These papers are filed. See paper F,	3,	105
Mott	4,	575 29
D. Dunham	6,	280
Note	7,	'212 27*
Heard	56,	'323 *
	58,	'109 *
Dunham	57,	'338 34*
C. H. & H. Mier	59,	'971 02*
Heard	60,	'324 *
	61,	'291 71*
	62,	'122 50*

63, '216 42*
64, '288 98*
65, '228 88*
66, '891 87*

These charged are excepted to by the deft., because not supported by vouchers. See dft's. exceptions.

All those tick'd off thus ' are contained in the statement of R. Withers, of 8th June, 1820, marked H, as paid by him in New York. See Mr. Auld's notes, 56 to 66, (in red ink) to his report.

Those marked * are in R. Withers's account, rendered to J. & R. Withers and Washington, November 17, 1820, marked I.

Complainant's Exceptions.

JOHN WITHERS, *vs.* REUBEN WITHERS. } *In Chancery.*

In this case, Master Commissioner Auld having returned his statement of the partnership account between the complainant and defendant, the complainant, John Withers, excepts to the said statement of account in the following particulars, and for the subjoined reasons, and others:

1st. He excepts to the credits allowed the defendant for the sum of $152 25,
13, 12. paid John Kelly, 14th May, 1818, and for the sum of $138 13, paid Lawrence, Rapley, & Co., 21st May, 1818, because these were transactions of a previous firm between the complainant and defendant—the affairs of which had been settled so far as concerned the litigant parties, and because the commissioner was limited, by the order under which he acted, to the statement of the partnership account of Jno. Withers & Co.

2d. He excepts to the allowance of $1,756 for the individual expenses of
14. 375 the defendant while residing in New York; because the allowance
16. 427 is in direct contradiction of the articles of copartnership.
20. 954

1,756

3d. He excepts to the account, because the commissioner has refused to charge
30. the defendant with the sum of $20 taken by deft., 2d Feb., 1819, out
31. of the cash of Jno. Withers & Co.; and the sum of $54 taken out of the same fund, and paid for coal and negro hire for himself and family;
33. and the sum of $152 taken out of the same fund, and paid for board of himself and family while residing in the town of Alexandria.

4th. Because the commissioner has refused to charge the deft. in account with
32. the sum of $173 45, the balance of defendant's account in the books
34. of Jno. Withers & Co.; and the sum of sixty dollars, the balance of
35. defendant's account with Withers & Washington; and the sum of $125, shown to be due in a settlement made in New York, by arbitrators, &c.; and because he refused to charge the defendant with the sum of
37. $140 25, received by him of C. W. Murray.

Report, p. 6, line 5, credited in same page, 7th Oct., 1817.

5th. Because the commissioner refused to charge the defendant in account with the sum of $390 70, paid by complainant to David and W. Kile, 9th June, 1819; and
15. the sum of $217 29 paid by complainant, 3d April, 1819,

67 to D. W. & J. Gantly; and the further sum of $377 82, paid by the complainant in draft on J. & R. Withers by the defendant.

See p. 6, 4 lines from the bottom, credited in p. 9.

6th. Because the commissioner has allowed the defendant a credit for the sum of $2,816 46, without any evidence to sustain it.

T. W. HEWITT,
for Complainant.

27th Feb., 1827.

Defendant's Exceptions.

JOHN WITHERS, *complainant,*
against
REUBEN WITHERS, *defendant.* } *In Chancery.*

The deft. excepts to so much of the report of Commissioner Auld respecting certain notes with which the defendant stands charged by the plaintiff, *since* the dissolution of the late copartnership of J. & R. Withers, and John Withers & Co., as founded solely and exclusively upon ex parte statements, unsupported by any legal and pertinent evidence. As to the several notes charged to this deft. as having been paid by the complainant, this deft. utterly denies all responsibility for the same, unless they are first exhibited before the commissioner for this defendant's inspection; and, therefore, he excepts—

1st. Because no evidence whatever, other than that which is entirely ex parte, has ever been adduced by the complainant before the commissioner, which went to justify and establish the charges of the notes aforesaid to the defendant, although the complainant had notice, in writing, from this defendant, to produce such evidence; a true copy of which is filed in this suit.

2d. That it has been clearly ascertained that the complainant charged in the books of the late firms of John & R. Withers, or John Withers & Co., subsequently to the dissolution, a large amount of notes to the debit of this defendant, as paid by him the complainant, when in fact these very notes were made in New York, and there paid by this defendant, and are *now*, and *ever have been*, in his *entire* possession, amounting to $10,069 80.

3d. That not only these notes aforesaid were improperly and erroneously charged to this defendant, but that many others were twice charged, and others again also charged to a considerable amount; which, upon investigation before the commissioner, were ascertained to be incorrect, and the same by him rejected, as per reference to his report will more fully and particularly appear.

4th. That from the above statement of facts, this defendant has reason to apprehend that further errors may still, and no doubt will be discovered, if the notes so charged and admitted by the commissioner are produced by the complainant, whereby they may be critically examined by this defendant; that unless they are produced, it is not possible for this defendant to decide whether or not it is proper that he should be charged therewith.

5th. That all charges made by the complainant against this defendant after the dissolution of the late firm should be supported by vouchers; and that this defendant therefore requires the production of all the notes charged after the dissolution as aforesaid, agreeably to the list or memoradum hereto annexed, marked A.

6th. That there is no evidence to show on what account, or for what purpose, these notes were drawn; when, where, how, and by whom paid, or how applied to the use and benefit of the late firm of J. & R. Withers, or J. Withers & Co.

7th. That this defendant also excepts to the money sent the late David Dunham, of the city of New York, being charged to him. 1st. Because he never authorized it. 2dly. Because he verily believes that the aforesaid remittances were faithfully applied by the said David Dunham to the payment of some of the very notes *now* charged to this defendant by the complainant, thereby making this defendant not only responsible for the money sent the aforesaid David Dunham, and improperly charged to this defendant, but also making him at the same time responsible for the notes paid with this very money.

8th. This defendant also excepts to a balance of $2,164 17 due by David Dunham to the complainant, being charged to him, because he never authorized it; nor does he, in any manner, hold himself accountable therefor, either in law or equity.

For all which causes and reasons, and for other reasons to be more particularly stated at the hearing, this defendant excepts to so much of the said report.

CHR. NEALE, *for Defendant.*

Feb. 27, 1827.

REUBEN WITHERS, *ads.* JOHN WITHERS. } *In Chancery.*

The defendant further excepts to so much of Commissioner Auld's report as disallows the defendant credit for $63 88, paid Randolph and Edgar; also, for not allowing a credit for $217 29, paid D. W. and S. Gantly, Dec. 7th, 1818; also, for $156 25, paid Randolph and Edgar on account interest due James Edgar, of Manchester, England, Sept. 15, 1817.

The defendant also excepts to the credit allowed the plaintiff of $266 38, said to have been paid by him to Stewart & Ortley, June 25, 1827.

CHR. NEALE, *for Deft.*

Commissioner's 3d Report.

IN ALEXANDRIA COUNTY COURT,

April term, 1828.

JOHN WITHERS, *complainant,* *vs.* REUBEN WITHERS, *defendant.* } *In Chancery.*

In pursuance of an order of the United States' circuit court of the District of Columbia, for the county of Alexandria, sitting as a court of chancery, I shall, on Wednesday, the 7th day of May, 1828, at my office in this place, and between the hours of ten o'clock in the morning, and six o'clock in the evening of that day, proceed to carry into effect the said order, namely, by ascertaining the reasonable travelling expenses to and from New York, and the difference of living at New York and Alexandria.

Given under my hand, at Alexandria, D. C., this 29th day of April, 1828.

COLIN AULD, *M. C.*

The report will be closed and returned to court on the morning of the 8th proximo.

C. A.

The foregoing notice was served on Reuben Withers, as appears from the affidavit of J. H. Brent, herewith filed.

Reuben Withers in account with John Withers.

		Dr.	Cr.
1826			
Nov. 1	To balance due by Reuben Withers to Jno. Withers, as reported this date -	$1,363 77	
	To difference between the amount of board and travelling expenses, being $1,756, allowed in former statement and report, and introduced into the books of J. & R Withers; and "the reasonable travelling expenses, and the necessary difference between the expenses of living at New York and at Alexandria", estimated and ascertained as under, to wit:		
	R. Withers left Alexandria, 1st Feb., 1818, and returned 1st July same year; absent 5 months. R. Withers left Alexandria 6th Aug., and returned 10th Dec. same year; 4 ms 4 ds. R. Withers left Alex. about 27th Feb., 1819, and returned Nov. same year; 8 ms. 26 ds. In all 18 ms., which, at $365 pr. annum, amounts to $547 50		
	His expenses for board in Alex. during same period, estimated at - 300		
	247 50		
	Deduct 18 days occupied in travelling to and from Alexandria, included in above - - - 18		
	229 50		
	Travelling expenses to and from N. York - - - - 150		
	379 50	1,376 50	
" "	To interest on $1,376 50, from 13th Dec., 1819, till 1st Nov., 1826, 6 years, 323 ds.	568 62	
" "	By balance due by Reuben Withers to John Withers, according to the above statement -	-	$3,308 89
		$3,308 89	$3,308 89
1826			
Nov. 1	To balance due by Reuben Withers to John Withers, at this date, brot. down -	$3,308 89	
	Interest on $2,341 59 at 6 p. cent. p. ann., till paid - - - - - -		

COMMISSIONER'S OFFICE,

Alex., May 8, 1828.

Pursuant to the order of the honorable court, a copy of which is hereunto annexed, and notice to the parties, I have reformed the account as directed; and from the foregoing statement, it appears that the defendant, Reuben Withers, is indebted to the complainant, John Withers, in the sum of $3,308 89, with interest on $2,341 59; a part thereof from the 1st November, 1820, at the rate of six per cent. per annum till paid.

All which is respectfully certified.

COLIN AULD, *M. C.*

Defendant's Exception.

Defendant excepts to this report, because the notice of the execution of the orders under which it was made was not a reasonable, and did not afford the defendant a sufficient time to attend before the commissioner.

R. I. TAYLOR, *Sol. for Deft.*

Commissioner's 4th Report.

JOHN WITHERS, *complainant,*
vs.
REUBEN WITHERS, *defendant.*
} *In Chancery.*

COMMISSIONER'S OFFICE, *April* 17, 1829.

In pursuance of the order of the honorable court, a copy whereof is hereunto annexed, with the notice given to the defendant, and proof of the execution thereof, on the 10th of this present month, I was attended by Christopher Neale, esquire, of counsel for defendant, who desired me specially to state that Reuben Withers's expenses in England, to the amount of nearly $2,000; and his expenses while in New York, from 17th April, till 25th June, 1817, and from 20th July, till 10th October, 1817, including a period of 151 days, and amounting to the sum of $443 28, were allowed to him by John & Reuben Withers, and that John Withers had his expenses allowed and paid out of the company's funds, when absent on the company's business. In support of Reuben Withers's charges for 1817, as above stated, the affidavit of Gordon Miller is produced, and herewith filed, marked with the letters A B.

The amount of Reuben Withers's charges, which were incurred in 1818 and 1819, and introduced into Reuben Withers's account with John Withers and Company, and the subject of the present reference, amount in the aggregate to $1,756.

In my last statement and report on this subject, I considered one dollar per day, or $365 a year in New York, and $200 a year in Alexandria, as a reasonable allowance, partly derived from my own knowledge, and partly from frugal men who rely more upon their ready money at market than their style of living, which I still adhere to. I admitted the sum of $1,756 as a credit to R. Withers, in the statement annexed to my first report, because the charges composing it were introduced into the books of the company, of which all the partners were considered cognizant. See note 14, 16 20, first report. I have been also told that the charge in Alexandria ought to have been $300 a year, and not $200, as stated.

I have made the statement agreeably to those views on the following page, from which it appears that Reuben Withers is indebted to John Withers in the sum of $2,207 and 77 cents, with interest on 1,562 dollars 37 cents, a part thereof, from 1st Nov., 1826, till paid; which the honorable court will please consider as the defendant's statement, with the exception, however, of the charge for interest, which the defendant's counsel does not admit as correct. The complainant requires the deposition of Geo. Brent to be filed, and also that of Horatio Clagett; and requires it further to be stated that he adheres to the statement made by me in my second report, with this exception, that the expenses of board, &c., in Alexandria, ought to have been $150 more; which alteration, including interest thereon, ($61 96) will make the balance due by R. Withers, on the said 1st day of November, 1826, $3,520 85, instead of $3,308 89, as stated in my second report before mentioned.

All which is respectfully reported.

COLIN AULD, *M. C.*

Gurdon Miller, of the city, county, and State of New York, being duly sworn, deposeth and saith, that, in the years one thousand eight hundred and sixteen and seventeen, he boarded in said city at Mrs. Tuber's, in Broadway, at which time Reuben Withers was a boarder in said house; and the price of board, for steady boarders, was ten dollars per week, and twelve and one half cents per day for brandy at dinner table; also, for separate fire in bed rooms in winter, fifty cents per day, and for transient boarders two dollars per day. And this deponent further swears that the said Reuben Withers did pay the first mentioned price of ten dollars per week, and twelve and a half cents per day for brandy, conformable to the customary charge at said house; as, also, for the said extra fire, when used by him; and that he had much use for said accommodation of separate fires to attend to his writing business.

GURDON MILLER.

STATE OF NEW YORK, *city of New York.*

I certify that, on this 25th day of March, Anno Domini 1829, before me, personally appeared Gurdon Miller, of the city of New York, who, being by me duly sworn, did depose and say that the contents of the within affidavit and deposition by him subscribed were true; the same being reduced to writing by the said Gurdon Miller himself.

In witness whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year above written.

W. C. HALLETT,
Notary Public and Commissioner, &c.,
New York.

DR. *Reuben Withers in account with John Withers.*

1826.

Nov. 1. To balance due by R. Withers to Jno. Withers, as reported this date, including interest, $398 68 - $1,363 77

To difference between the amount of board and expenses allowed him, being $1,756, and the amount which ought to have been allowed, determined as follows: if 151 days require $443 23, what will 548 days, or

1½ years require? say		$1,608 72
From which deduct amount of board in Alexandria, 1½ years, at $300 - -	450	
Amount which ought to have been credited	1,158 72	
Which am't deducted from $1,756, leaves to be charged Reuben Withers - - - -		597 28
To interest upon $597 28, from 13th Dec., 1819, the date of 1st statement, till 1st Nov., 1826, 6 years, 323 days - - - - - -		246 72
Amount due by R. Withers to Jno. Withers, 1st November, 1826 - - - - -		$2,207 77
And int. on $1,562 37, a part thereof from 1st Nov., 1826, till paid.		

November term, 1828, 14*th day*.

DISTRICT OF COLUMBIA, *Alexandria County.* } *sct.*

JOHN WITHERS, *complainant*, *vs.* REUBEN WITHERS, *defendant.* } *In Chancery.*

Recommitted to Commissioner Auld, and continued.
Teste: EDM. I. LEE, *C. C.*

COMMISSIONER'S OFFICE,

Alexandria, March 21, 1829.

The defendant, Reuben Withers, will please take notice that, on Friday, the tenth day of next month (April,) at 10 o'clock in the forenoon, I shall proceed to act under the order above recited; and that, on the seventeenth day of same month, I shall close my report, and return the same to the court.

COLIN AULD, *M. C.*

Commissioner's 5th Report.

COMMISSIONER'S OFFICE,

Alexandria, May 12, 1829.

Mr. REUBEN WITHERS, *New York.*

SIR: Please take notice, that the case of John Withers against you, in the circuit court of this county, has been again recommitted to me to ascertain "the reasonable travelling expenses to and from New York, and the necessary difference between the expense of living at New York and at Alexandria;" and that I shall proceed in the same on the 15th day of June next, at 10 o'clock A. M., and close my report on the 17th day of the same month, and file the same in the clerk's office among the papers in the said suit.

I am, your obedient servant,
COLIN AULD.

ALEXANDRIA COUNTY, *to wit:*

Personally appeared before me, a justice of the peace in and for the county

aforesaid, Richard H. Clagett, and made oath that, on the 16th day of this present month, he did deliver to the within named Reuben Withers, in the city of New York, a copy of the within written notice.

Given under my hand, this 30th day of May, 1829.

Signed: N. S. WISE.

In the Circuit Court of the Dis. of Col., Alexandria County.

JOHN WITHERS, *complainant*, *vs.* REUBEN WITHERS, *defendant*. } *In Chancery.*

COMMISSIONER'S OFFICE, *June* 17, 1829.

Pursuant to the order of the honorable court, I have ascertained the reasonable travelling expenses of the defendant, Reuben Withers, to and from New York, and the necessary difference between the expenses of living at New York and at Alexandria, and find that, instead of the sum of 1,756 dollars for which the defendant takes credit in the books of J. & R. Withers, and which is introduced into my first statement and report, the sum ought only to have been 379 dollars and 50 cents. I have therefore charged the defendant with the difference of 1,376 dollars and 50 cents, and interest thereon from the 13th December, 1819, being the date from which interest had formerly been calculated, as exhibited in the annexed statement; and in accordance with which, I further find that the defendant, Reuben Withers, is indebted to John Withers, the complainant, in the sum of three thousand three hundred and eight dollars and eighty-nine cents, ($3,308 89) with interest on 2,341 dollars and 59 cents, a part thereof, from 1st November, 1826, till paid.

Due notice was given to the plaintiff and defendant, of the time and place of taking up this business; of closing the report, and returning it to the clerk's office. A copy of notice, and affidavit of the service on the defendant, are annexed. Neither partly attended.

All which is respectfully submitted and certified.

COLIN AULD, *M. C.*

Reuben Withers in account with John Withers. Account reformed pursuant to order of Court.

		Dr.	Cr.
1826			
Nov. 1	To balance due by R. Withers, as per report and statement of this date - -	$1,363 77	
	To difference between amount of board and travelling, being $1,756, as allowed in former statement and report, and introduced into the books of J. & R. Withers; and the "reasonable travelling expenses, and the necessary difference between the expense of living at New York and at Alexandria," estimated and ascertained as under, viz.		

REUBEN WITHERS'S ACCOUNT—Continued.

		Dr.	Cr.
1826			
	Reuben Withers left Alexandria, 1st Feb., 1818, and returned 1st July same year; absent - - - 5 months		
	He left Alex. 6th Aug., and returned 10th Dec. same year - 4 4 ds.		
	He left Alex. about 27th Feb., 1819, and returned in November same year - - - - 8 26		
	In all 18 m's.		
	Which, at $365 per ann., amounts to $547 50		
	His expenses for board in Alexandria during same period would have amounted to - - 300		
	247 50		
	His travelling expenses to and from N. York $150		
	Deduct 18 days when travelling, included in first item - 18		
	132	1,376 50	
" "	To interest on $1,376 50, from 13th Dec., 1819, till 1st Nov., 1826; 6 yrs. 323 days	568 62	
" "	To balance due John Withers at this date -	-	$3,308 89
		$3,308 89	$3,308 89
1826			
Nov. 1	To balance due John Withers by Reuben Withers, at this date, brought down -	$3,308 89	
	Int. on $2,341 59, from 1st Nov., 1826, at 6 per cent. per ann. till paid.		

Defendant excepts to this report, because it is contrary to evidence; and for other reasons to be more particularly stated at the hearing.

CHR. NEALE, *Sol. for Deft.*

DISTRICT OF COLUMBIA, *to wit:*

I, Edmund I. Lee, clerk of the United States' circuit court of the District of Columbia, for the county of Alexandria, do hereby certify that the foregoing and annexed transcript of the proceedings and papers in the case of John Withers vs. Reuben Withers, lately depending on the chancery side of the said court, is truly copied from the records in my office.

In testimony whereof, I have hereunto set my hand, and affixed the public seal of my office, this 22d day of June, 1831.

[L. S.] EDM. I. LEE, *C. C.*